

## **Exhibit 3**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
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6 IN RE: )  
RESIDENTIAL CAPITAL, LLC, )  
7 Et al., )  
 )Civil Action No.  
8 Debtors, )12-12020 (MG)  
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14 CONFIDENTIAL DEPOSITION OF JOHN S. DUBEL  
15 New York, New York  
16 Wednesday, July 10, 2013  
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23

24 Reported by:  
JOMANNA DeROSA, CSR  
25 JOB NO. 63468

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<p>1 2 July 10, 2013 3 1:43 p.m. 4 5 6 Confidential Deposition of 7 JOHN S. DUBEL, held at the offices 8 of McKool Smith, One Bryant Park, 9 47th Floor, New York, New York, 10 before Jomanna DeRosa, a Certified 11 Shorthand Reporter and Notary Public 12 of the States of New York, New Jersey, 13 California and Arizona. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S : 3 4 MORRISON &amp; FOERSTER 5 Attorneys for Debtors 6 1290 Avenue of the Americas 7 New York, New York 10104 8 BY: J. ALEXANDER LAWRENCE, ESQ. 9 10 MCKOOL SMITH 11 Attorneys for Freddie Mac 12 One Bryant Park 13 New York, New York 10036 14 BY: PETER GOODMAN, ESQ. 15 MICHAEL CARNEY, ESQ. 16 17 JONES DAY 18 Attorneys for FGIC 19 222 East 41st Street 20 New York, New York 10017 21 BY: HOWARD SIDMAN, ESQ. 22 RICHARD WYNNE, ESQ. 23 24 25 ///</p>
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<p>1 2 A P P E A R A N C E S : 3 WILLKIE FARR &amp; GALLAGHER 4 Attorneys for Stonehill, Monarch, CQS, 5 Bayview Fund Management, 6 787 Seventh Avenue 7 New York, New York 10019 8 BY: JOSEPH BAIO, ESQ. 9 EMMA JAMES, ESQ. 10 11 WEIL GOTSHAL &amp; MANGES 12 Attorneys for FGIC, 13 767 Fifth Avenue 14 New York, New York 10153 15 BY: RICHARD SLACK, ESQ. 16 17 KRAMER LEVIN NAFTALIS &amp; FRANKEL 18 Attorneys for Official Committee of 19 Unsecured Creditors, 20 1117 Avenue of the Americas 21 New York, New York 10036 22 BY: DANIEL EGGERMANN, ESQ. 23 24 25 ///</p>	<p>1 2 A P P E A R A N C E S : 3 ROPES &amp; GRAY 4 Attorneys for Steering Committee of 5 of RMBS Investors 6 800 Boylston Street 7 Boston, Massachusetts 02199 8 BY: ANDREW DEVORE, ESQ. 9 10 DECHERT 11 Attorneys for Bank of New York Mellon 12 1095 Avenue of the Americas 13 New York, New York 10036 14 BY: JAMES MOORE, ESQ. 15 NEGISA BALLUKU, ESQ. 16 17 THE LAW OFFICES OF THOMAS M. MULLANEY 18 Attorneys for CQS 19 489 Fifth Avenue 20 New York, New York 10017 21 BY: THOMAS MULLANEY, ESQ. 22 23 24 25 ///</p>

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<p>1 2 A P P E A R A N C E S: 3 SEWARD &amp; KISSEL 4 Attorneys for U.S. Bank, 5 One Battery Park Plaza 6 New York, New York 10004 7 BY: MARK KOTWICK, ESQ. 8 DALE CHRISTENSEN, JR., ESQ. 9 10 ALSTON &amp; BIRD 11 Attorneys for Wells Fargo Bank, 12 90 Park Avenue 13 New York, New York 10016 14 BY: MICHAEL JOHNSON, ESQ. 15 16 GIBBS &amp; BRUNS 17 Attorneys for Steering Committee of 18 RMBS Investors 19 1100 Louisiana 20 Houston, Texas 77002 21 BY: DAVID SHEEREN, ESQ. 22 23 ALSO PRESENT: 24 PHIL GLAUBERSON, Legal Video Specialist 25 SHAUNA AARON (Summer Associate at Weil)</p>	<p>1 J. DUBEL - CONFIDENTIAL 2 THE VIDEOGRAPHER: This is Tape 3 No. 1 of the videotaped deposition of John 4 Dubel in re: Residential Capital, LLC, et al. 5 in the United States Bankruptcy Court, 6 Southern District of New York, case number 7 1212020MG. This deposition is being held at 8 McKool Smith, One Bryant Park, New York, New 9 York, on July 10th, 2013, at approximately 10 1:43 p.m.. My name is Phil Glauberson from 11 the firm of TSG Reporting, and I am the legal 12 video specialist. The court reporter is 13 Jomanna DeRosa with TSG Reporting. 14 Will counsel please introduce 15 themselves? 16 MR. GOODMAN: My name is Peter 17 Goodman, and I'm with the firm of McKool 18 Smith, and we are counsel to Freddie Mac. 19 MR. BAIO: Joseph Baio from Willkie 20 Farr &amp; Gallagher. I'm also here with Emma 21 James. We represent Stonehill, Monarch, the 22 CQS and Bayview Fund Management. 23 MR. DEVORE: Andrew Devore from 24 Ropes &amp; Gray for the Steering Committee of 25 RMBS Investors.</p>
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<p>1 J. DUBEL - CONFIDENTIAL 2 MR. SHEEREN: David Sheeren, Gibbs 3 Bruns, Steering Committee of RMBS Investors. 4 MR. CHRISTENSEN: Dale Christensen, 5 Seward &amp; Kissel for Law Debenture. 6 MR. JOHNSON: Michael Johnson from 7 Alston &amp; Bird for Wells Fargo Bank as trustee. 8 MR. MULLANEY: Tom Mullaney from 9 the Law Offices of Thomas M. Mullaney for CQS. 10 MR. KOTWICK: Mark Kotwick from 11 Seward &amp; Kissel on behalf of U.S. Bank as 12 Trustee. 13 MR. EGGERMANN: Daniel Eggermann 14 from Kramer Levin on behalf of the Official 15 Creditors. 16 MR. MOORE: James Moore from 17 Dechert on behalf of Bank New York Mellon. 18 MR. LAWRENCE: Alex Lawrence, 19 Morrison Foerster on behalf of the Debtors. 20 MR. SLACK: Richard Slack from Weil 21 Gotshal &amp; manges for FGIC and the FGIC 22 rehabilitator. And with me today is Shauna 23 Aaron who is one of our summer associates. 24 MR. WYNNE: Richard Wynne of Jones 25 Day for FGIC.</p>	<p>1 J. DUBEL - CONFIDENTIAL 2 MR. SIDMAN: Howard Sidman, Jones 3 Day for FGIC. 4 THE VIDEOGRAPHER: Will the court 5 reporter please swear in the witness. 6 J O H N S. D U B E L, called as a witness, 7 having been duly sworn by a Notary 8 Public, was examined and testified as 9 follows: 10 EXAMINATION BY 11 MR. GOODMAN: 12 Q. Good afternoon, Mr. Dubel. We've 13 met before, but again I'm Peter Goodman from 14 McKool Smith for the purpose of the record. 15 Mr. Dubel, have you ever been 16 deposed before? 17 A. I have. 18 Q. How many times? 19 A. Twenty or thirty times. I'm not -- 20 I don't have an exact count. 21 Q. And so you know the ground rules in 22 terms of deposition, the court reporter needs you 23 to answer audibly. The court reporter can't pick 24 up hand gestures or facial gestures or nods. The 25 videographer obviously can, so -- and if you need</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 a break, you know, just let us know, and we can</p> <p>3 take a break. Okay?</p> <p>4 A. I understand. Thank you.</p> <p>5 Q. I just -- to the extent we are in a</p> <p>6 line of questioning, I'd like to finish that line</p> <p>7 of questioning before we do the break, but just</p> <p>8 let us know, and we'll find a convenient time for</p> <p>9 you to break.</p> <p>10 Okay. So you said --</p> <p>11 A. Can I -- can I just -- can you hear</p> <p>12 me okay on my microphone? All right.</p> <p>13 Q. Okay. You mentioned that you've</p> <p>14 been deposed, I think, 20 or 30 times. Is that</p> <p>15 correct?</p> <p>16 A. Approximately, yes.</p> <p>17 Q. Generally, the last ten times that</p> <p>18 you've been deposed, what was the nature of the</p> <p>19 depositions, if you can recall?</p> <p>20 A. It would have been related to -- I</p> <p>21 do restructuring work for my career so it would</p> <p>22 have been related to a bankruptcy situation or</p> <p>23 some litigation within a restructuring environment</p> <p>24 where, you know, I -- I was deposed.</p> <p>25 Q. And were you deposed as a fact</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 witness in those cases, or were you deposed as an</p> <p>3 expert in those cases?</p> <p>4 A. I'm not sure -- generally, as a</p> <p>5 fact witness. I'm not sure I've ever been deposed</p> <p>6 as an expert, but I'm assuming I'm a fact witness</p> <p>7 with expertise of what -- you know, knowledge of</p> <p>8 the company.</p> <p>9 Q. Have -- have you ever served as an</p> <p>10 expert witness in a case, a litigation case?</p> <p>11 A. As a witness, no.</p> <p>12 Q. Expert witness?</p> <p>13 A. Correct, as an expert witness, I'm</p> <p>14 sorry, yes, no.</p> <p>15 Q. Have you ever testified in court</p> <p>16 before?</p> <p>17 A. I have.</p> <p>18 Q. How many times?</p> <p>19 A. Probably a dozen times.</p> <p>20 Q. And what period of time are we</p> <p>21 talking about in terms of being deposed over a</p> <p>22 dozen times? Was it over a ten-year period, a</p> <p>23 five-year period?</p> <p>24 MR. SIDMAN: Objection to form.</p> <p>25 MR. GOODMAN: You can answer.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: You can answer.</p> <p>3 A. Over the last 30 years of my</p> <p>4 career.</p> <p>5 Q. Well, why don't we stick to maybe</p> <p>6 the last ten years of your career. How many have</p> <p>7 you testified within the last ten years of your</p> <p>8 career?</p> <p>9 A. In court?</p> <p>10 Q. In court.</p> <p>11 A. Approximately two or three times.</p> <p>12 Q. And what were the nature of those</p> <p>13 cases that you testified in court two or three</p> <p>14 times over the past ten years?</p> <p>15 A. It would have been bankruptcy</p> <p>16 cases, either confirmation hearings or litigation</p> <p>17 related to a confirmation, or it might have been a</p> <p>18 DIP hearing. I just don't -- I don't recall</p> <p>19 exactly what -- you know, which cases, but --</p> <p>20 Q. And what were those cases, the</p> <p>21 names of those cases?</p> <p>22 A. WorldCom would have been one. I</p> <p>23 believe I testified in Acterna, in RCN, in re,</p> <p>24 obviously, on the names of those. Those are the</p> <p>25 only actual in-court appearances.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Okay. WorldCom. Actera?</p> <p>3 A. Acterna.</p> <p>4 Q. Acterna.</p> <p>5 A. A-C-T-E-R-N-A.</p> <p>6 Q. And RCN.</p> <p>7 Okay. Let's talk about WorldCom</p> <p>8 for a moment. Do you recall the nature of your</p> <p>9 testimony in WorldCom?</p> <p>10 A. It was related to the confirmation</p> <p>11 hearings.</p> <p>12 Q. Okay. In what aspect of the</p> <p>13 confirmation hearings?</p> <p>14 A. I previously served as the chief</p> <p>15 financial officer of WorldCom prior to the</p> <p>16 permanent management team being brought in, and i</p> <p>17 continued to assist WorldCom. So I had knowledge</p> <p>18 of all of the issues related to the -- the</p> <p>19 accounting records of WorldCom.</p> <p>20 Q. So the testimony -- I'm trying to</p> <p>21 understand. It was testimony concerning the</p> <p>22 accounting records of WorldCom?</p> <p>23 A. I don't recall exactly what the</p> <p>24 testimony was. I'd have to go back and, you know,</p> <p>25 look at something; but it had to do with issues</p>

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surrounding the confirmation hearings.

Q. And how about Acterna, what was the nature of that testimony?

A. Acterna would have been confirmation.

Q. And what aspect of confirmation would the testimony have been about?

A. I was the chief restructuring officer, so I would have been called upon to proffer testimony as it related to the confirmation hearing.

Q. And you say "proffer testimony." Did you actually testify, or did you put in a declaration or affidavit?

A. I definitely put in a declaration or affidavit, whatever it was. I -- I don't recall whether I actually got up on the stand or not. I might have testified from the back. You know, the judge might have asked me a question or two. I just don't recall. It was -- it was generally not a contested hearing.

Q. Can you summarize the substance of the proffer briefly?

A. Just around the facts and

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circumstances of having Acterna emerge from its Chapter 11.

Q. And did the testimony include a narrative on the plan of reorganization in the case?

MR. SIDMAN: Objection to form.

You can answer.

A. I don't recall.

Q. How about in the WorldCom case, did your testimony also relate to a narrative of or summary of the plan of reorganization in that case?

MR. SIDMAN: Objection to form.

You can answer.

A. I don't think it did.

Q. What was the nature of your testimony in the RCN case?

A. I don't recall whether -- I -- I might have testified, I just don't recall, it's been several years, on the -- on the DIP loan or, you know, again on -- on any issues related to the confirmation. Again, I might have just proffered my testimony.

Q. Do you recall what aspect of the

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confirmation you testified or proffered to?

A. I was the president of RCN, so I would have been the person who would have been proffering or testifying as to all of the -- you know, all of the issues needed for -- what they would have needed the witness for, getting the -- you know, the plan confirmed.

Q. And what does that mean all of the issues necessary to get the plan confirmed?

A. I'm not the expert on this, but I believe was -- 1129 has certain steps that you have to go through in front of the judge to get the judge to approve saying that the company has done all of the things that it needs to do, and I would have been the factual witness in that.

Q. So -- just so I understand, you were confirming to the Court that RCN had met all of the requirements in the plan. Is that correct?

MR. SIDMAN: Objection to form.

You can answer.

Q. To -- to the confirmation.

MR. SIDMAN: Same objection.

You can answer.

A. I don't recall exactly what it was.

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I mean, there's a -- it's probably in the records at the -- at the court for RCN. I just don't recall exactly what it was.

Q. But it had something to do with confirmation of the plan and the meeting of the 1129 requirements. Correct?

A. That's what I believe, yes.

Q. Okay. How about your testimony with respect to the DIP loan, do you recall the substance of that testimony?

A. No, I don't recall it. It probably would have just been -- if we even did testimony, it would have been just, you know, getting the loan in place at the initial outset of the case.

Q. So would it have been financial testimony?

MR. SIDMAN: Objection to form.

You can answer.

A. I assume so. I just don't recall the testimony.

Q. Would the testimony have been in the nature of the ability to meet the terms of the DIP loan?

A. Again, I -- I don't recall.

5 (Pages 14 to 17)

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Now, have you provided in-court</p> <p>3 testimony on any other matters other than these</p> <p>4 three matters within the past ten years?</p> <p>5 MR. SIDMAN: Objection to form.</p> <p>6 You can answer.</p> <p>7 A. I may have. I just -- you know,</p> <p>8 sitting here right now, I don't remember.</p> <p>9 Q. These are -- would you view these</p> <p>10 three cases as the material cases that you've been</p> <p>11 involved in where you provided testimony over the</p> <p>12 last ten years?</p> <p>13 MR. SIDMAN: Objection to form.</p> <p>14 You can answer.</p> <p>15 A. If there were another case that I</p> <p>16 testified in, which I don't recall right now, that</p> <p>17 might also be. I don't really know what you mean</p> <p>18 by "material" in relation to the question, but I</p> <p>19 would have testified as it related to what I</p> <p>20 explained before, so --</p> <p>21 Q. I guess from one of a better word</p> <p>22 material, important? Significant?</p> <p>23 A. Significant to what, to the case or</p> <p>24 to -- I'm not sure I understand.</p> <p>25 Q. Yes, significant to the case.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Let's try that.</p> <p>3 MR. SIDMAN: Objection to the form</p> <p>4 of the question.</p> <p>5 If there is a question, then you</p> <p>6 can answer.</p> <p>7 A. If it were a confirmation hearing,</p> <p>8 then I would view that as significant to the case</p> <p>9 because that's how the companies emerge from</p> <p>10 Chapter 11.</p> <p>11 Q. So in terms of significant, as you</p> <p>12 defined it, as confirmation of a case, these are</p> <p>13 the three cases that you can recall testifying in?</p> <p>14 A. If I did testify. Again, I don't</p> <p>15 remember if I testified in all of them.</p> <p>16 Generally, I would have prepared for it. Whether</p> <p>17 I actually got up on the stand for a minute or</p> <p>18 just stood in the back and was proffered, I just</p> <p>19 don't recall every case whether I did or did not.</p> <p>20 Q. Okay. Now, how about testimony in</p> <p>21 connection with confirmation of a plan over the</p> <p>22 interval of 30 years ago to 20 to ten years ago,</p> <p>23 because we just talked about the ten-year</p> <p>24 interval, do you recall testifying as to</p> <p>25 confirmation within that ten to 20, 30-year</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 interval in any case?</p> <p>3 A. I don't recall. At that point I</p> <p>4 don't recall which -- when and where I testified,</p> <p>5 you know, specifically.</p> <p>6 Q. Fair enough. It's a long time.</p> <p>7 A. Yes.</p> <p>8 Q. Is it possible that you may have</p> <p>9 testified during that time interval concerning</p> <p>10 confirmation of a plan?</p> <p>11 A. I might have.</p> <p>12 Q. Are you familiar with what a plan</p> <p>13 of reorganization is in a bankruptcy case?</p> <p>14 A. I am.</p> <p>15 Q. Okay. What is your understanding</p> <p>16 of a plan of reorganization?</p> <p>17 A. It is the legal document that</p> <p>18 outlines how the company will emerge from the</p> <p>19 Chapter 11 proceedings.</p> <p>20 Q. Do you know whether a plan of</p> <p>21 reorganization provides for how creditors are</p> <p>22 going to get paid?</p> <p>23 MR. SIDMAN: Objection to form.</p> <p>24 You can answer.</p> <p>25 A. Yes, it generally does.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. GOODMAN: Can you --</p> <p>3 MR. SIDMAN: Off the record,</p> <p>4 please.</p> <p>5 MR. GOODMAN: We'll go off the</p> <p>6 record.</p> <p>7 THE VIDEOGRAPHER: We're going off</p> <p>8 the record. The time is 1:59 p.m..</p> <p>9 (Recess taken.)</p> <p>10 THE VIDEOGRAPHER: We're back on</p> <p>11 the record. The time is 2:02 p.m.</p> <p>12 Q. Now, when you were involved in the</p> <p>13 WorldCom case, were you involved in coming up with</p> <p>14 the plan of reorganization for that case?</p> <p>15 MR. SIDMAN: Objection to form.</p> <p>16 Answer, if you can.</p> <p>17 A. No, I was not.</p> <p>18 Q. Who was involved in coming up with</p> <p>19 the plan of reorganization in that case?</p> <p>20 A. The current management and counsel,</p> <p>21 along with, I assume, a variety of creditors.</p> <p>22 Q. And so you didn't participate at</p> <p>23 all in the development of the plan of</p> <p>24 reorganization in that case?</p> <p>25 MR. SIDMAN: Object to form.</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 You can answer.</p> <p>3 A. No, I did not.</p> <p>4 Q. How about Acterna, were you</p> <p>5 involved at all in the development of the plan of</p> <p>6 reorganization in the Acterna case?</p> <p>7 A. Yes, I was.</p> <p>8 Q. And what was your role?</p> <p>9 A. In Acterna, I was the chief</p> <p>10 restructuring officer for the company. In that</p> <p>11 role I was the -- you know, the lead management</p> <p>12 person responsible for all of the restructuring</p> <p>13 activities, including the bankruptcy proceedings.</p> <p>14 Q. And would you have reviewed the</p> <p>15 plan of reorganization?</p> <p>16 A. In the Acterna case?</p> <p>17 Q. Yes.</p> <p>18 A. Absolutely, yes.</p> <p>19 Q. How about in the RCN case, were you</p> <p>20 involved in all -- at all in the development of</p> <p>21 plan of reorganization in the RCN case?</p> <p>22 A. Yes, I was.</p> <p>23 Q. And what was your role in that</p> <p>24 regard?</p> <p>25 A. I was the president of RCN; and I</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 guess towards the latter part, I converted over to</p> <p>3 the chief restructuring officer. And similar to</p> <p>4 Acterna, would have had all the lead</p> <p>5 responsibilities for the restructuring process,</p> <p>6 the bankruptcy and as a member of management</p> <p>7 leading the bankruptcy process.</p> <p>8 Q. In your -- in the past 30 years, do</p> <p>9 you recall how many bankruptcy cases you've been</p> <p>10 involved in where you had a role in developing the</p> <p>11 plan of reorganization?</p> <p>12 A. In various different positions,</p> <p>13 probably 15 or 20.</p> <p>14 Q. And generally, how would you</p> <p>15 summarize your roles in those 15 to 20 cases in</p> <p>16 terms of developing a plan of reorganization?</p> <p>17 MR. SIDMAN: Objection to form. Do</p> <p>18 you want him to go through each one, or do you</p> <p>19 want --</p> <p>20 Q. I said generally, if you could</p> <p>21 summarize.</p> <p>22 A. If I was on the company side,</p> <p>23 then -- and I had the, you know, key role or a</p> <p>24 lead role in management or as an advisor, I would</p> <p>25 have been working, you know, closely with advisors</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 to develop the plan. If I was on the creditor</p> <p>3 side, I would have been as a creditor working</p> <p>4 towards the development of a plan.</p> <p>5 Q. Do you know what a Disclosure</p> <p>6 Statement is?</p> <p>7 A. I do.</p> <p>8 Q. What's your understanding of a</p> <p>9 Disclosure Statement?</p> <p>10 A. The best nonlegal way to describe</p> <p>11 it, since I'm not a lawyer, is it's kind of a</p> <p>12 plain English document that provides a simpler to</p> <p>13 read and understand interpretation of the plan and</p> <p>14 also provides additional information that the</p> <p>15 readers of the document can use to understand so</p> <p>16 that they can make a determination as to whether</p> <p>17 or not they would like to either vote, vote in</p> <p>18 favor or vote to reject the plan.</p> <p>19 Q. And do you know whether Disclosure</p> <p>20 Statements generally summarize, in layman's terms,</p> <p>21 the plan of reorganization?</p> <p>22 MR. SIDMAN: Objection to form.</p> <p>23 You can answer.</p> <p>24 A. They generally do.</p> <p>25 Q. Do they provide financial</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 information?</p> <p>3 MR. SIDMAN: Object to form.</p> <p>4 You can answer.</p> <p>5 A. Most Disclosure Statements will</p> <p>6 provide some level of financial information, yes.</p> <p>7 Q. What kind of financial information?</p> <p>8 A. Depending on the facts and</p> <p>9 circumstances in the particular situation, they</p> <p>10 can either provide projections or historical</p> <p>11 financial information or both.</p> <p>12 Q. And what's the purpose of the</p> <p>13 financial information, to your understanding?</p> <p>14 MR. SIDMAN: Objection.</p> <p>15 You can answer.</p> <p>16 A. Again, it's for the readers to</p> <p>17 understand and be able to make a determination as</p> <p>18 to which they -- which way they would like to vote</p> <p>19 on the plan of reorganization.</p> <p>20 Q. And you've been involved in -- in</p> <p>21 developing Disclosure Statements. Is that</p> <p>22 correct?</p> <p>23 MR. SIDMAN: Objection.</p> <p>24 You can answer.</p> <p>25 A. Yes, I have.</p>



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Q. What would your role normally be in terms of providing or developing a Disclosure Statement?

A. It would depend on what role I had in the reorganization process. If I was on the management side of the debtor, I would have been involved in the actual drafting of it and providing input and information to include in the Disclosure Statement. If I was on the creditors' side, I would generally have been involved in trying to determine if there was information that I felt would be appropriate to have in the Disclosure Statement.

Q. Would you have been involved in providing the financial information that is contained in a Disclosure Statement in some of the cases you've worked on?

MR. SIDMAN: Objection.

You can answer.

A. In some of the cases, yes.

Q. Do you recall how many cases you provided financial information?

A. In the majority of the cases that I would have been involved with from the management

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side, it would have been either my role as -- if I was a chief financial officer or if I was a CRO or what have you, I might have been someone working under my direction to provide information.

Q. And who would have been under your direction?

A. A CFO or a finance or controller, a finance person or controller.

Q. How about a financial advisor to the company?

A. Well, not within the management, but as an outside party, yes, a financial advisor.

Q. And you would have worked with a financial advisor on the financial information that would have been contained in a Disclosure Statement. Is that correct?

MR. SIDMAN: Objection.

You can answer.

A. Generally, yes.

Q. Do you know how many times -- do you recall how many times you worked with a financial advisor with respect to financial information that was contained in a Disclosure Statement?

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A. The vast majority of the situations where I was working on the management side, I would have been working with a financial advisor.

Q. Now, if someone provided you with financial information you believe was wrong or incorrect, would you notify that person that you didn't believe the financial information was correct?

MR. SIDMAN: Objection to the form.  
You can answer.

A. If I was -- I'm sorry. Could you repeat the question?

Q. Okay. If someone working under your direction or control provided you with information for a Disclosure Statement that was not correct, would you have notified that person that you believed the information was incorrect?

MR. SIDMAN: Objection to form.  
You can answer.

A. If it was information that was going to be included in the Disclosure Statement, I might have notified that person or someone else about my views on it.

Q. And why would you do that?

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A. If there was information that I believed was not accurate and it was going to be included in a Disclosure Statement, I would want to make sure that it was accurate to the best of our ability to make it accurate.

Q. So it wouldn't be appropriate for information to be put into a Disclosure Statement where you had control over that financial information and you believed that information to be incorrect. Is that correct?

MR. SIDMAN: Objection to the form.  
You can answer, if you can.

A. I'm not sure. I think you're asking me a legal question. I'm not a lawyer.

Q. It's not a legal question. It's just a layman's question.

A. If I knew that information was inaccurate and was going to be included, as I said earlier, I would have informed somebody to find out why it was inaccurate and correct it.

Q. Because you wouldn't want incorrect information to be disseminated to parties interested in the Disclosure Statement. Correct?

MR. SIDMAN: Objection to form.

8 (Pages 26 to 29)

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 You can answer.</p> <p>3 A. Because I would like to have the</p> <p>4 information as accurate as possible.</p> <p>5 Q. And why is that?</p> <p>6 MR. SIDMAN: Objection.</p> <p>7 Answer.</p> <p>8 A. Because I would like to have the</p> <p>9 information available to the people who are the</p> <p>10 readers of the document to have accurate</p> <p>11 information to use it in whatever shape, fashion</p> <p>12 or form they would like to use it in.</p> <p>13 Q. So they can make an informed</p> <p>14 decision about the plan of reorganization. Right?</p> <p>15 MR. SIDMAN: Objection.</p> <p>16 You can answer.</p> <p>17 A. I don't know what users are always</p> <p>18 going to be doing. Some people don't even read</p> <p>19 the Disclosure Statement. So I don't know whether</p> <p>20 they would use it for that purpose or not.</p> <p>21 Q. I'm not talking about one or two</p> <p>22 people. I'm talking about generally. You want to</p> <p>23 make sure that people are informed of and have</p> <p>24 sufficient and accurate information about the plan</p> <p>25 of reorganization. Right?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I think I've testified to that</p> <p>3 before, yes.</p> <p>4 Q. So the answer is yes?</p> <p>5 A. Yes.</p> <p>6 Q. And you worked on the development</p> <p>7 of a Disclosure Statement in RCN. Is that right?</p> <p>8 A. I did.</p> <p>9 Q. And what was your role in -- in</p> <p>10 working on a Disclosure Statement for the RCN</p> <p>11 matter?</p> <p>12 A. As I testified previously, I was</p> <p>13 the president of RCN. And then towards the latter</p> <p>14 stages, I switched my title and role to chief</p> <p>15 restructuring officer.</p> <p>16 Q. So would you say you had major</p> <p>17 involvement in the development of the Disclosure</p> <p>18 Statement in the RCN case?</p> <p>19 MR. SIDMAN: Objection to form.</p> <p>20 You can answer.</p> <p>21 A. I believe I testified earlier to</p> <p>22 that, yes.</p> <p>23 Q. How about Acterna, what was your</p> <p>24 role in the development of the Disclosure</p> <p>25 Statement in Acterna?</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. As I testified earlier, I was the</p> <p>3 chief restructuring officer at Acterna.</p> <p>4 Q. And would you have had major</p> <p>5 involvement in the Disclosure Statement at</p> <p>6 Acterna?</p> <p>7 MR. SIDMAN: Objection.</p> <p>8 You can answer.</p> <p>9 A. Yes.</p> <p>10 Q. And the WorldCom case, were you</p> <p>11 involved in the development of the Disclosure</p> <p>12 Statement in WorldCom?</p> <p>13 A. I believe I testified earlier that</p> <p>14 I was not.</p> <p>15 Q. You were not, okay.</p> <p>16 How many cases over the past 30</p> <p>17 years were you involved in the development of a</p> <p>18 Disclosure Statement?</p> <p>19 A. Probably somewhere in the range of</p> <p>20 15 to 20.</p> <p>21 Q. And how many of those 15 to 20 do</p> <p>22 you recall having material involvement in the</p> <p>23 development of a Disclosure Statement?</p> <p>24 MR. SIDMAN: Objection.</p> <p>25 You can answer.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. The majority.</p> <p>3 Q. More than ten?</p> <p>4 A. Yes.</p> <p>5 Q. Fourteen out of 15?</p> <p>6 A. I'd have to go back and kind of</p> <p>7 spend some time thinking about each case and kind</p> <p>8 of figuring it out, but the majority.</p> <p>9 Q. Okay. When did you come to be</p> <p>10 employed by FGIC?</p> <p>11 A. On or about January 2nd of 2008.</p> <p>12 Q. And for the purpose of the record,</p> <p>13 FGIC, what's the full name of the company that you</p> <p>14 worked for -- worked for in 2008?</p> <p>15 A. Financial Guaranty Insurance</p> <p>16 Company commonly referred to as FGIC.</p> <p>17 Q. For the purpose of today's record,</p> <p>18 I'll be referring to it as FGIC.</p> <p>19 A. Yes, FGIC or -- or F-G-I-C,</p> <p>20 either -- either one.</p> <p>21 Q. And how did you come to be employed</p> <p>22 by FGIC in January of 2008?</p> <p>23 A. My company was retained by FGIC to</p> <p>24 provide temporary employment services of John</p> <p>25 Dubel.</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. And what type of temporary</p> <p>3 employment services did you provide to FGIC?</p> <p>4 A. Initially, I was the chief risk</p> <p>5 officer and subsequently became the chief</p> <p>6 executive officer.</p> <p>7 Q. As chief risk officer of FGIC, what</p> <p>8 were your duties?</p> <p>9 A. My duties were -- were basically to</p> <p>10 lead all of the restructuring activities that FGIC</p> <p>11 had to deal with.</p> <p>12 Q. And what kind of restructuring</p> <p>13 activities did FGIC have to deal with?</p> <p>14 A. We had to develop a restructuring</p> <p>15 or workout department since we did not have an</p> <p>16 active workout department at the time. We had to</p> <p>17 determine how to restructure the overall</p> <p>18 organization in light of the financial situation</p> <p>19 that FGIC was in. And so I managed work -- you</p> <p>20 know, groups of people and worked with advisors</p> <p>21 both legal and others in that aspect.</p> <p>22 Q. And what was the financial</p> <p>23 situation that FGIC was in in 2008 when you joined</p> <p>24 the company?</p> <p>25 A. When I joined the company, we</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 had -- since it was on or about January 2nd, we</p> <p>3 had yet to report our fourth quarter 2007 numbers,</p> <p>4 but the -- it became apparent that, based upon</p> <p>5 what was happening in the marketplace with a</p> <p>6 variety of different CDO transactions, that we had</p> <p>7 insured that there were going to be some problems</p> <p>8 with those transactions.</p> <p>9 So we knew that there was -- it was</p> <p>10 not going to be an easy situation to work through.</p> <p>11 And we had also been, I believe at that point,</p> <p>12 been put on notice by one or more of the rating</p> <p>13 agencies that there was a potential review of the</p> <p>14 triple A rating that FGIC had.</p> <p>15 Q. Was there a concern that FGIC was</p> <p>16 going to default on its obligations to its</p> <p>17 creditors?</p> <p>18 MR. SIDMAN: Objection to form.</p> <p>19 A. At that time, no; not when I</p> <p>20 joined.</p> <p>21 Q. Did there come a time that FGIC</p> <p>22 became concerned that it was going to default on</p> <p>23 its obligations?</p> <p>24 A. There came a time when we felt we</p> <p>25 might fall below the statutory required capital</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 initially; and then subsequent to that, there</p> <p>3 became a time where we felt we might be in a</p> <p>4 position where we might default on our obligations</p> <p>5 to our -- to our policyholders.</p> <p>6 Q. And when did you become concerned</p> <p>7 that you might fall below the statutory required</p> <p>8 capital?</p> <p>9 MR. SIDMAN: Objection. I'm just</p> <p>10 going to instruct the witness not to answer to</p> <p>11 the extent he obtained that information</p> <p>12 through attorney-client communications.</p> <p>13 THE WITNESS: I can answer?</p> <p>14 MR. SIDMAN: Okay.</p> <p>15 A. Okay. When we were filing our</p> <p>16 fourth quarter 2007 statutory financial</p> <p>17 statements.</p> <p>18 Q. And approximately what date would</p> <p>19 that have been?</p> <p>20 A. I don't recall exactly. It would</p> <p>21 have been some time in the first six months of the</p> <p>22 year. Probably in the May or June time frame. I</p> <p>23 know we were late in filing them -- 2008, that is.</p> <p>24 Sorry.</p> <p>25 Q. Thank you.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 And when did FGIC become concerned</p> <p>3 that it might default on its obligations to its</p> <p>4 policyholders?</p> <p>5 MR. SIDMAN: Objection to form.</p> <p>6 And once again, I'll instruct the witness not</p> <p>7 to answer if that information was obtained</p> <p>8 through attorney-client communications.</p> <p>9 You can answer, if you can.</p> <p>10 A. Could you repeat the question to</p> <p>11 make sure I --</p> <p>12 Q. Yeah. When did FGIC become</p> <p>13 concerned that it might default on its obligations</p> <p>14 to its policyholders?</p> <p>15 A. The answer to that question is</p> <p>16 based upon -- it was based upon discussions with</p> <p>17 counsel.</p> <p>18 Q. It might have been based upon</p> <p>19 discussions with counsel, but did you ever discuss</p> <p>20 that matter with anyone else not with FGIC?</p> <p>21 MR. SIDMAN: Objection to form.</p> <p>22 Q. The concern that you were going to</p> <p>23 default with respect to policyholders.</p> <p>24 A. Let me answer it this way: In the</p> <p>25 latter part of 2008, as we were getting prepared</p>

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2 to file additional financial statements for the  
3 second quarter and the third quarter of 2008, we  
4 were closer to our statutory limits, and so I  
5 would say in the third quarter of 2008 is when  
6 it -- it looked like we might have a problem.

7 Q. And was that about the same time  
8 when you had discussions with counsel on that  
9 issue?

10 MR. SIDMAN: Objection to form.

11 You can answer. You can answer.

12 A. On or about that same time.

13 Q. And did you make disclosure in your  
14 financial statements in the third quarter of 2008  
15 that you might not be able to meet your  
16 obligations to your policyholders?

17 A. I don't recall the financial -- you  
18 know, the -- all the financial disclosures, but I  
19 believe we put in a number of risk factors in our  
20 financial statements in our footnotes and other  
21 disclosures that would have laid out some of the  
22 concerns.

23 Q. And, generally, do you recall what  
24 those concerns might have been?

25 A. As I sit here right now, I don't

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2 MR. GOODMAN: Well, I asked him if  
3 -- did there come a time.

4 MR. SIDMAN: Okay. You're only  
5 asking of the time? That's fine.

6 You can answer that question.

7 A. Yes.

8 Q. When was that?

9 MR. SIDMAN: Objection.

10 A. Well, I -- I think all through the  
11 2008 time frame and through 2009 as the company  
12 struggled to stay above the statutory minimum  
13 requirements that are set forth by the -- what was  
14 at the time the New York State Insurance  
15 Department.

16 Q. And did FGIC come up with a plan to  
17 meet the issues concerning the statutory capital  
18 requirements and its obligations to its  
19 policyholders?

20 A. We did.

21 Q. And what was the plan?

22 A. We developed a plan that would have  
23 attempted to restore our statutory surplus through  
24 a variety of different mechanisms.

25 Q. Do you recall what those mechanisms

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2 recall exactly what we would have disclosed. I'd  
3 have to go back and, you know, look at the  
4 financial statements.

5 Q. And this is all in the fourth  
6 quarter of 2008 I believe you testified to.  
7 Correct?

8 MR. SIDMAN: Objection.

9 A. The risk factors would have  
10 probably been disclosed in the -- in whatever  
11 financials we filed during 2008. So I think I  
12 testified earlier it was the third and the fourth  
13 quarter.

14 Q. And did there come a time when you  
15 realized that you were going to need to  
16 restructure the company's balance sheet in order  
17 for the company to maintain a sufficient statutory  
18 capital and meet its obligations to its  
19 policyholders?

20 MR. SIDMAN: Objection to form, and  
21 I object -- I instruct the witness not to  
22 answer to the extent that he obtained this  
23 information via attorney-client  
24 communications.

25 Otherwise, go ahead and answer.

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2 were?

3 A. Yes. The initial plan was -- it  
4 was generally in three areas. The first area  
5 would have been an offer to exchange securities,  
6 the second would have been commutations of certain  
7 policies, and the third would have been the  
8 restructuring of certain other policies.

9 Q. Under this type of plan, what types  
10 of obligations were you seeking to commute?

11 A. Generally, they would have been CDO  
12 obligations that were in CDS form that we would  
13 have sought to commute.

14 Q. Any other types of obligations you  
15 were seeking to commute?

16 A. I don't recall. There might have  
17 been one or two others smaller transactions that  
18 would have been in -- not in CDS form.

19 Q. And explain to me what you mean  
20 under this plan by "restructuring policies"?

21 A. We had certain other policies that  
22 were issued, financial guaranty policies that were  
23 guarantying CDS transactions which we were going  
24 to restructure and put into a separate  
25 organization through a separate subsidiary.

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Q. And what about exchange of securities, what did you mean by that?

A. In terms of security -- in terms of policies that we had issued, there were many policies where the underlying bonds that were part of the securitization, we offered to exchange those bonds for a -- an upfront payment and split the bonds -- effectively put those bonds into a -- into separate trusts whereby any of the insurance payment proceeds that would go into the -- the securitization trust would flow down into that subtrust, and we would receive those payments back in exchange -- over time in exchange for the upfront payment. And the other portion of that subtrust, the underlying cash flows of the securitizations, would go to the holders of that certificate.

Q. Were you working at that time with any informal creditor group?

A. No.

Q. Was this an exchange offer that -- that -- that you were trying to accomplish or effectuate?

A. We referred to it as an offer to

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exchange.

Q. And was that offer to exchange successful?

A. No, it was not.

Q. Okay. So the offer to exchange wasn't successful. I would assume the company was still having its -- the same financial issues that you mentioned earlier. Isn't that correct?

MR. SIDMAN: Objection to form.

You can answer.

A. At that point in time, the company's statutory surplus was below the minimum required by New York State Insurance Department regulations, and we also were under what's referred to as a 1310 order from the New York State Insurance Department, which precluded us from paying any claims that we'd received under our policies but continue to operate in the ordinary course other than that.

Q. Okay. And did the 1310 order ask the company to address those issues?

A. Yes, it did.

Q. And how did the company address those issues?

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A. Through the restructuring that I just outlined for you.

Q. The one that didn't work?

MR. SIDMAN: Objection to form.

A. Through the offer to exchange commutation and restructuring of other policies, yes.

Q. Yeah, but that -- but that was not successful. Correct?

A. That's correct, that was not successful.

Q. So what did the company, FGIC, do next to comply with the 1310 order?

A. We developed an alternative plan which was a plan to put the company into a rehabilitation proceeding so that it could go into and out of the rehabilitation proceeding as quickly as would be appropriate and come out on the other side a restructured entity and be able to pay its policyholders in a fair and equitable manner.

Q. And it -- did FGIC work with an informal committee of creditors or policyholders on that plan?

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A. We did.

Q. And was that plan ever memorialized between FGIC and this informal creditor/policyholder group?

MR. SIDMAN: Object to form.

A. Yeah, I'm not -- I'm not sure I know what you mean by "memorialized." FGIC did put forward a plan that it presented to the New York State Insurance Department as a proposal as a means to restructure FGIC through a rehabilitation process.

Q. And did -- what form did the proposal take? Was it a contract? I mean --

A. It was a proposed plan of rehabilitation which was presented to, I'll call it, the New York State Insurance Department because I just don't recall exactly the timing of when they changed their name to the New York State Department of Financial Services, but I'll use them interchangeably at this point in time.

Q. Okay. How did the plan propose to treat FGIC-wrapped RMBS security holders?

A. How did that initial proposed plan?

Q. Yes, that you submitted.

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A. Well, there were multiple components of that plan. One of the -- one of the components was that all policyholders that chose not to work with FGIC to commute or settle their transactions would be dealt with across the board in a fair and equitable manner similarly, not differentiating RMBS from other policyholders.

And the way in that -- in which that was proposed was that the policyholders would -- policyholders would receive an initial payment on claims that -- as they were received or that had been received to date with the hope that there may be further payments down the road.

Q. When I say "FGIC-wrapped RMBS security holders," do you understand what that means?

A. I -- well, maybe you can explain it to me.

Q. Well, you seemed to know because you were helping the court reporter. I'd like to see what your understanding is.

MR. SIDMAN: Objection to form.

A. What I was referring to in my answer was the FGIC policyholders. Okay? I

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respect to FGIC-wrapped RMBS security holders?

A. I don't recall that it had anything to do with the FGIC-wrapped RMBS security holders. As I testified earlier, it was for the FGIC policyholders.

Q. Okay. And by "policyholders," did the FGIC-wrapped RMBS security holders that we referred to earlier, we just referred to, these are bonds that were issued under a trust. Is that your understanding?

MR. SIDMAN: Object to the form.

You can answer.

A. They can be bonds, notes --

Q. Certificates --

A. -- certificates, any different -- you know, there's many different forms that they could come in.

Q. And I believe what you were trying to distinguish in terms of what -- how you responded to my question is that the certificate holders, the bondholders, they don't hold the underlying FGIC policy guaranty that something that is held by the trustee that issued the securities. Correct?

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wasn't referring to the FGIC-wrapped security, whatever -- whatever the term you used was.

Q. Okay. So you don't understand what that means?

A. I --

MR. SIDMAN: Objection to form. He's asked -- the witness has asked you for your -- your understanding. You asked the question.

MR. GOODMAN: I'm trying to find out if he understands what I mean.

A. Repeat the term.

Q. FGIC-wrapped RMBS security holders.

A. Well, I can only assume that you mean the parties that hold the bonds that are part of the securitization that FGIC would have ensured through the policyholder or the trust in that -- trustees in that case.

Q. Okay. So let's go with that understanding. Okay? When I say "FGIC-wrapped RMBS security holders," I am referring to the definition that you just gave me. Okay?

A. Okay.

Q. And what did the plan call for with

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MR. SIDMAN: Object to the form. Answer, if you can.

A. I'm not sure what you mean by "the underlying." There was a relationship that FGIC has with a policyholder, and in the RMBS securitizations, those were -- the policyholder was the trustee.

Q. The trustee. Okay.

And how did the FGIC plan propose to deal with those policyholders, the trustees?

A. I believe I testified earlier that -- that --

Q. Just so I'm clear. I'm not sure.

A. As I testified earlier, the -- as claims would be received or had been received upon -- emerging from the rehabilitation process and the lifting of any 1310 order, FGIC would pay a percentage of the claims to the policyholders. And then if in the future there was any available ability to make any further payments, they would if they could.

Q. Okay. And in terms of the initial payments to the policyholders, did the plan have a term for what that initial payment represented?

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MR. SIDMAN: Object to the form.

A. When you say "represented," what did you mean -- what do you mean?

Q. Was there a term that -- that was used within the plan to define that initial payment?

A. Yes.

Q. What was that term?

A. It's the cash payment percentage.

Q. CPP. Okay.

A. Shorthand, CPP, yes.

Q. And with respect to payments over time that you referred to earlier, did the plan have a term for that payment with respect to the policyholders?

A. It would -- it would be the CPP, if the CPP percentage were to change.

Q. Okay. And did the plan have any kind of deferred payment, obligation that it committed to pay to policyholders?

MR. SIDMAN: Objection to form.

You can answer.

A. The plan made reference to the fact that there were deferred payment amounts. I don't

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believe the initial plan had any obligation or commitment to pay those because it was the -- it was undetermined if there was even the ability to make those payments.

Q. But if the company had the ability to make the payments, they would make payments, deferred payments over time. Correct?

A. The company would increase its CPP, cash payment percentage --

Q. Okay.

A. -- which to the extent that it would go up from -- just make up numbers -- 10 percent to 12 percent, then that differential would be on account of amounts that had not been paid in the past. And the company could also have a lower CPP, in which case it would have mechanisms to clawback any overpayments that it made previously.

Q. Okay. Have you ever heard of the term "DPO"?

A. I have.

Q. Okay. When have you heard of that term with respect to FGIC?

A. When the initial plan was

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developed, it was a term of art used in the initial plan.

Q. Okay. So was the DPO part of the plan that you submitted to New York State?

MR. SIDMAN: Objection to form.

A. You're talking about the initial?

Q. Yes.

A. I don't remember whether it was that term or something very similar, but the -- it was either that or that deferred payment percentage or something -- yeah, something along the lines of that, yes.

Q. And let's just call it DPO for now.

A. Fine.

Q. What's your understanding of what the DPO is --

A. Well --

Q. -- for the purpose of the initial plan?

A. -- it's very clear that it's not a certificate, an instrument or anything else along those lines. It is a notional amount that represents the difference between the original claim, allowed claim amount, and the amount of

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cash that would have been previously paid on that claim.

Q. Now, did the initial plan also provide for the commutation of the policies that FGIC issued to the trustees?

MR. SIDMAN: Object to the form.

You can answer.

A. There were certain policies that FGIC might have issued to a -- to a -- to the trustees that were included in the commutation.

Q. Which trustees are we talking about?

A. I -- I don't recall which -- which -- there's seven or eight different trustees that FGIC's dealt with. I just don't recall which ones right now.

Q. What types of trusts are we talking about?

A. These would have been trust related to CDO transactions.

Q. So with respect to trusts that were involved in RMBS transactions, am I correct that the initial plan had no provision for commutation of the policies that FGIC issued to those trusts?

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MR. SIDMAN: Object to the form.

You can answer.

A. No, you're not correct.

Q. Okay. Why am I not correct?

A. The plan had provisions for FGIC to do any types of commutations with any parties, any policyholders that it had.

Q. Was there ever any discussions with the informal policyholder groups with respect to FGIC having the right to commute policies that were issued to the trust that had --

MR. SIDMAN: Object to --

Q. -- that were dealing with the RMBS securities?

MR. SIDMAN: Object to the form.

You can answer.

A. I'm sorry. Go back and restate that. I apologize. Just repeat it, please. I'm sorry.

Q. That's fine.

Was there ever any discussions with the informal policyholder group concerning FGIC having the right to commute policies that were issued to the trust dealing with the RMBS

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securities?

A. Yes.

Q. When were those discussions?

A. From the time of the initial discussions about the proposal plan throughout the process.

Q. And who did you have those discussions with?

A. It would have been members of the ad hoc policy. I think it was referred to as the ad hoc -- I can't remember what the name -- the official term was. You might know because I think your organization was part of it. I don't remember the official title of the group, but it would have been members of that group.

Q. And what did you tell those members of that group with respect to your right to commute the policies that insured their securities?

MR. SLACK: Can -- can we -- can we go off the record, and -- and I've go to -- I've got to ask the witness a question and make sure that we're -- we're able to answer this question.

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MR. GOODMAN: Well, I -- let's go off the record, but -- are we off the record?

THE VIDEOGRAPHER: No, not yet.

MR. GOODMAN: Okay. Let's go off the record.

THE VIDEOGRAPHER: This is the end of Videotape No. 1 of the deposition of John Dubel. The time is July 10th, 2013, 2:49 p.m..

(Recess taken.)

THE VIDEOGRAPHER: We're now on the record beginning approximately 2:59 p.m., July 10th, 2013. This will be Videotape No. 2 in the deposition of John Dubel.

MR. SIDMAN: Counsel, before we, I wanted to just make a brief statement on the record. Before our first break, there were a series of questions about communications between FGIC and ad hoc policy in connection with the initial claim. It was my understanding that those discussions were pursuant to certain confidentiality agreements, and we do not know if those confidentiality agreements are still in place or still

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applicable. So on that basis, we want to designate the instruction of those questions and answers with respect to the issue as confidential in terms of a confidentiality agreement, and if we later on learn that they're confidential, we will deal with that issue, but right now for purposes of this deposition moving forward, we want to designate that the questions and answers previously as confidential and any other questions and answers with respect to that issue confidential.

MR. GOODMAN: Okay. For now, I would agree to your proposal. I would ask that you look at the confidentiality agreement in the next two or three days and let us know if you still have a concern with respect to the issue that you just raised.

MR. SIDMAN: We'll do our best to do that.

MR. GOODMAN: Okay.

Q. Before we went off the record, we were talking about the discussions that you had with the Steering Committee regarding the right to



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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 commute their policies, and I had asked you about</p> <p>3 the nature of those discussions, and you were</p> <p>4 about to answer, I believe, when we went on a</p> <p>5 break.</p> <p>6 A. Yes, it was -- it would have been</p> <p>7 the right to commute any policies, not just</p> <p>8 specifically their policies, but any policies</p> <p>9 that -- in fact, they weren't their policies. I</p> <p>10 think you're referring to them as their policies.</p> <p>11 They would be policies with a trustee in those</p> <p>12 particular situations if you're referring to RMBS</p> <p>13 securitizations, but we would have the right -- we</p> <p>14 discussed that we would have the right to commute</p> <p>15 any policies that FGIC has.</p> <p>16 Q. And did the Committee -- Steering</p> <p>17 Committee agree with you that you had the right to</p> <p>18 commute the policies insuring the trusts that had</p> <p>19 issued their securities?</p> <p>20 A. They agreed that -- they were in</p> <p>21 full agreement that we should have the right to</p> <p>22 commute any policies that -- that we could work</p> <p>23 out arrangements with.</p> <p>24 Q. Including the policies insuring</p> <p>25 their underlying securities in the trust?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection to the form.</p> <p>3 You can answer.</p> <p>4 A. I don't believe that we talked</p> <p>5 about specific policies. We talked about any</p> <p>6 policies that FGIC had issued, and they were fully</p> <p>7 supportive of us commuting any policies that FGIC</p> <p>8 had -- had issued.</p> <p>9 Q. Do you recall who you had those</p> <p>10 conversations with?</p> <p>11 A. It would have been members of</p> <p>12 the -- we'll call it the ad hoc group because I</p> <p>13 don't remember what their official, if there was</p> <p>14 an official title, but I'll call it the ad hoc</p> <p>15 group, the Steering Committee, the ad hoc group.</p> <p>16 So it could have been somebody from Fir Tree, AIG,</p> <p>17 MetLife, Citibank, New York Life, and I believe</p> <p>18 that your client would have been involved in some</p> <p>19 of those discussions. Your client, as I</p> <p>20 understand, was not necessarily part -- officially</p> <p>21 part of that group but participated in all of</p> <p>22 those discussions and -- that we had.</p> <p>23 Q. And did -- do you recall whether</p> <p>24 the committee asked you what you meant by</p> <p>25 commuting their policies?</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection to the form.</p> <p>3 A. As I previously stated, we didn't</p> <p>4 have discussions about, specific discussions about</p> <p>5 commuting RMBS security policies. So if you were</p> <p>6 referring to that before, the -- the group also</p> <p>7 did hold other than RMBS securitization policies.</p> <p>8 Q. No, I'm just talking about RMBS</p> <p>9 securities.</p> <p>10 Did you have a discussion with the</p> <p>11 Steering Committee about commuting specifically</p> <p>12 RMBS policies?</p> <p>13 MR. SIDMAN: Objection to form.</p> <p>14 You can answer.</p> <p>15 A. I don't recall having discussions</p> <p>16 about those specific -- you know, the specifics of</p> <p>17 the -- the policies that we would have discussed</p> <p>18 other than there was some discussions pertaining</p> <p>19 to CDOs and others but not specifically about</p> <p>20 RMBS-related policies.</p> <p>21 Q. Thank you. And what happened with</p> <p>22 this initial plan?</p> <p>23 A. What do you mean by what happened</p> <p>24 with it?</p> <p>25 Q. Did the New York State Department</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 of Finance approve the plan when they received it?</p> <p>3 What was the next step?</p> <p>4 A. The next step was at, I'll call it,</p> <p>5 the DFS, Department of Financial Services. The</p> <p>6 DFS, or whoever it was at the time, retained</p> <p>7 counsel to -- to look at it and worked with the</p> <p>8 New York Liquidation Bureau to determine if it was</p> <p>9 something that would be something they would be</p> <p>10 willing to work towards.</p> <p>11 Q. And was it something they were</p> <p>12 willing to work towards?</p> <p>13 A. Yes.</p> <p>14 Q. At the time of the initial plan,</p> <p>15 what was your title at FGIC?</p> <p>16 A. I was the chief executive officer.</p> <p>17 I don't remember if I was the vice chairman of the</p> <p>18 board at the time or not. I subsequently became</p> <p>19 the vice chairman of the board.</p> <p>20 Q. And with respect to the initial</p> <p>21 plan, I think you mentioned earlier it required</p> <p>22 FGIC to go through a rehabilitation process. Is</p> <p>23 that correct?</p> <p>24 A. That was the proposal, yes.</p> <p>25 Q. And did FGIC, in fact, go through a</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 rehabilitation process?</p> <p>3 A. It is currently still in a</p> <p>4 rehabilitation process.</p> <p>5 Q. And what is your role in the</p> <p>6 rehabilitation process?</p> <p>7 MR. SIDMAN: Object to the form.</p> <p>8 A. I am the chief executive officer</p> <p>9 of -- of FGIC.</p> <p>10 Q. And who do you report to?</p> <p>11 MR. SIDMAN: Object to the form.</p> <p>12 You can answer.</p> <p>13 MR. SLACK: Objection to the form.</p> <p>14 A. I'm not sure I know who I report</p> <p>15 to. It's a -- rehabilitation process is a unique</p> <p>16 process. It's developed under the laws of the New</p> <p>17 York State insurance law, and there is a</p> <p>18 rehabilitator in place. So I guess I report to</p> <p>19 the rehabilitator, but, you know, I -- there's no</p> <p>20 org chart or anything that shows that.</p> <p>21 Q. And who is the rehabilitator?</p> <p>22 A. Benjamin Lawsky.</p> <p>23 Q. And when did the company file for</p> <p>24 rehabilitation?</p> <p>25 A. I'm not sure technically whether</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 the company filed -- I think the company filed to</p> <p>3 seek the rehabilitation, but effectively I think</p> <p>4 the question you're getting at is in June of 2012,</p> <p>5 there was a petition made to put the company into</p> <p>6 rehabilitation. I believe it was done by the</p> <p>7 superintendent of the Department of Financial</p> <p>8 Services to appoint him as the rehabilitator, and</p> <p>9 FGIC did not object to that.</p> <p>10 Q. Fair enough. And --</p> <p>11 A. I may have that just a little bit</p> <p>12 off, but the lawyers can always correct that.</p> <p>13 Q. On or about the time, for one of a</p> <p>14 better word, FGIC filed for rehabilitation, did</p> <p>15 FGIC file a plan of rehabilitation?</p> <p>16 MR. SIDMAN: Object to the form.</p> <p>17 A. The rehabilitator filed, I want to</p> <p>18 say it was the latter part of September of 2012, a</p> <p>19 proposed plan of rehabilitation.</p> <p>20 Q. And did it also at that time file a</p> <p>21 Disclosure Statement?</p> <p>22 A. Yes, it did -- or he did, I should</p> <p>23 say. The rehabilitator did.</p> <p>24 Q. Were you involved in developing the</p> <p>25 plan of reorganization that the rehabilitator</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 filed?</p> <p>3 MR. SIDMAN: Object to the form.</p> <p>4 A. There are quite a few similarities</p> <p>5 to the -- from the plan that the rehabilitator</p> <p>6 filed to the initial plan that was proposed by --</p> <p>7 by FGIC. And during the time from -- in the point</p> <p>8 in time in I think it was the end of June when the</p> <p>9 rehabilitator was actually appointed until the</p> <p>10 time in which the plan was filed by the</p> <p>11 rehabilitator, I did work with counsel to the</p> <p>12 rehabilitator in the -- to -- in the development</p> <p>13 of that plan.</p> <p>14 Q. And did you also work with the</p> <p>15 rehabilitator and his counsel on the Disclosure</p> <p>16 Statement?</p> <p>17 A. I think technically I worked with</p> <p>18 an agent for the rehabilitator. Not with the</p> <p>19 rehabilitator himself but an agent for the</p> <p>20 rehabilitator and counsel on the Disclosure</p> <p>21 Statement, yes.</p> <p>22 Q. And by -- who was the agent?</p> <p>23 A. The individual who signed the</p> <p>24 rehabilitation plan and Disclosure Statement,</p> <p>25 Peter Giaccone.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. And did you have significant</p> <p>3 involvement in the development of the Disclosure</p> <p>4 Statement?</p> <p>5 MR. SIDMAN: Object to the form.</p> <p>6 A. I had involvement. I'm not sure I</p> <p>7 understand what you mean "significant" in terms</p> <p>8 of -- was I actively involved in it? Yes.</p> <p>9 Q. Did you spend a lot of hours</p> <p>10 working on it?</p> <p>11 A. Yes.</p> <p>12 Q. Did you review it?</p> <p>13 A. Yes.</p> <p>14 Q. Did the rehabilitator or his agent</p> <p>15 ask you if you were okay with it?</p> <p>16 MR. SIDMAN: Objection.</p> <p>17 MR. SLACK: I object, and I</p> <p>18 instruct him not to answer.</p> <p>19 MR. GOODMAN: And what's the basis?</p> <p>20 MR. SLACK: Privilege and work</p> <p>21 product.</p> <p>22 MR. SIDMAN: Same objection; same</p> <p>23 instruction.</p> <p>24 MR. GOODMAN: Privilege between the</p> <p>25 rehabilitator and Mr. Dubel?</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SLACK: Well, privilege between</p> <p>3 the rehabilitator, his counsel, FGIC,</p> <p>4 Mr. Dubel, all those are all covered by the</p> <p>5 same privilege.</p> <p>6 MR. GOODMAN: I was just talking</p> <p>7 about the rehabilitator and Mr. Dubel at the</p> <p>8 time.</p> <p>9 MR. SIDMAN: No. You said did the</p> <p>10 rehabilitator or his counsel ask --</p> <p>11 MR. SLACK: Then I'm sure the</p> <p>12 answer is going to actually be no because</p> <p>13 he -- I don't think he talked to Benjamin</p> <p>14 Lawskey about it, if that's really what you're</p> <p>15 asking.</p> <p>16 MR. GOODMAN: Okay.</p> <p>17 Q. Did you talk to the</p> <p>18 rehabilitator -- did the rehabilitator or his</p> <p>19 agent ask you if you were okay with the Disclosure</p> <p>20 Statement?</p> <p>21 MR. SLACK: He's asking whether or</p> <p>22 agents? I'm going to instruct him not to</p> <p>23 answer on the basis --</p> <p>24 MR. GOODMAN: Okay. We just</p> <p>25 defined the agent as Peter Giaccone.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Did the rehabilitator or</p> <p>3 Mr. Giaccone ask you whether you were okay with the</p> <p>4 Disclosure Statement?</p> <p>5 MR. SLACK: I'll instruct him not</p> <p>6 to answer on the basis of privilege.</p> <p>7 MR. GOODMAN: How does he share a</p> <p>8 privilege? I really don't understand that.</p> <p>9 How does he share a privilege with those two</p> <p>10 individuals?</p> <p>11 MR. SLACK: What two individuals?</p> <p>12 MR. GOODMAN: We just identified</p> <p>13 the two individuals. It was Mr. Giaccone --</p> <p>14 MR. SLACK: Yes.</p> <p>15 MR. GOODMAN: -- and Benjamin</p> <p>16 Lawskey.</p> <p>17 MR. SLACK: This is all part of the</p> <p>18 rehabilitation process.</p> <p>19 MR. GOODMAN: Yeah. So?</p> <p>20 MR. SLACK: You're not entitled --</p> <p>21 the entire process there is -- is --</p> <p>22 everything in there is work product or -- or</p> <p>23 attorney-client privilege, and you're not</p> <p>24 entitled to get to the communications that</p> <p>25 went on between the rehabilitator and its</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 agent and Mr. Dubel about the rehabilitation</p> <p>3 process, any of the documents that were filed</p> <p>4 in the rehabilitation on the basis of both</p> <p>5 attorney-client and work product.</p> <p>6 MR. GOODMAN: You haven't made a</p> <p>7 case for an attorney-client or work product.</p> <p>8 Are you instructing him not to answer this</p> <p>9 question?</p> <p>10 MR. SLACK: I thought I just did</p> <p>11 that.</p> <p>12 MR. GOODMAN: Okay. So you're -- I</p> <p>13 just want the record to be clear. You're</p> <p>14 instructing him not to answer a question about</p> <p>15 his communication between the rehabilitator</p> <p>16 and Mr. Giaccone and himself. Is that what</p> <p>17 you're saying?</p> <p>18 MR. SLACK: I did that already. I</p> <p>19 don't have to repeat myself. I don't think</p> <p>20 you're hard of hearing.</p> <p>21 MR. GOODMAN: All right. I just --</p> <p>22 no, but you have a remarkable theory of what</p> <p>23 the attorney and work -- client privilege is</p> <p>24 about.</p> <p>25 MR. SLACK: I actually think it's</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 -- I actually think not. It's pretty basic.</p> <p>3 The fact is that -- is that these were --</p> <p>4 these were documents that were prepared in</p> <p>5 connection with the rehabilitation. The</p> <p>6 rehabilitation is a proceeding.</p> <p>7 Therefore, if you're asking</p> <p>8 questions about the development of the</p> <p>9 rehabilitation, and you're asking for</p> <p>10 communications about it, that is going to be</p> <p>11 either work product or privilege. Sometimes</p> <p>12 both; sometimes one.</p> <p>13 MR. GOODMAN: Okay. Note my</p> <p>14 objection for the record, but -- and I'm --</p> <p>15 I'm going to reserve the right to recall this</p> <p>16 witness.</p> <p>17 Let's mark the Disclosure</p> <p>18 Statement.</p> <p>19 MR. SIDMAN: For the record, I also</p> <p>20 instruct the witness not to answer on the same</p> <p>21 basis.</p> <p>22 (Dubel Exhibit 1 marked for</p> <p>23 identification.)</p> <p>24 Q. Mr. Dubel, could you please turn to</p> <p>25 page 2 of Dubel Exhibit 1. Are you there?</p>

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1 J. DUBEL - CONFIDENTIAL  
 2 A. Yes.  
 3 Q. I draw your attention to the third  
 4 full paragraph starting, "The plan addresses these  
 5 challenges."  
 6 Do you see that?  
 7 A. I do.  
 8 Q. And it says, "The plan addresses  
 9 these challenges: First, essential to the plan  
 10 are the proposed modifications to the plan which  
 11 are in the restructured policy terms."  
 12 Do you see that sentence?  
 13 A. No, could you repeat the sentence  
 14 that you just said?  
 15 Q. The third -- first -- the third  
 16 full paragraph, "The plan addresses these  
 17 challenges."  
 18 A. Yes, okay.  
 19 Q. "First, essential to the plan are  
 20 the proposed modifications to the policies which  
 21 are in the restructured policy terms."  
 22 A. Okay. I think -- I thought I heard  
 23 you say something different before. Sorry.  
 24 Q. So you're on that paragraph?  
 25 A. Yes.

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1 J. DUBEL - CONFIDENTIAL  
 2 subsequent affidavit that references those numbers  
 3 that are in there and also the plan approval  
 4 order.  
 5 Q. Do you know what -- the current CPP  
 6 under the plan of rehabilitation that was  
 7 confirmed by the board, do you know what the  
 8 amount of the initial CPP is?  
 9 A. At this point in time has been -- I  
 10 think it was approved by the court at 17 and a  
 11 quarter percent, but it is subject to the  
 12 rehabilitator modifying it up or down prior to the  
 13 effective date.  
 14 Q. Okay. But other than the changes  
 15 to the initial CPP and the ultimate recovery to  
 16 policyholders, do you agree with the summary set  
 17 forth in this paragraph?  
 18 A. Again, the -- the plan itself has  
 19 been amended and modified, and this refers to  
 20 issues central to the plan. I'd have to go back  
 21 and look at the rest of the plan to see if there's  
 22 other, you know, changes in here. But in general,  
 23 I would agree with it, the concept, yes; but there  
 24 may be other changes that I'm not recollecting as  
 25 we sit here right now.

1 J. DUBEL - CONFIDENTIAL  
 2 Q. Have you reviewed that paragraph  
 3 before?  
 4 A. I have.  
 5 Q. And do you agree with what's set  
 6 forth in this paragraph?  
 7 MR. SIDMAN: Are you asking about  
 8 the entire paragraph?  
 9 MR. GOODMAN: Yes.  
 10 MR. SIDMAN: Go ahead and read it.  
 11 A. This is an earlier draft of it --  
 12 or I shouldn't say "draft." If this is an earlier  
 13 version of the plan, it's subsequently been  
 14 amended.  
 15 Q. It's been amended to increase the  
 16 initial CPP. Isn't that correct?  
 17 MR. SIDMAN: Objection to form.  
 18 A. Without looking at the subsequent  
 19 documents, I couldn't tell you if there were other  
 20 amendments in that particular paragraph.  
 21 Q. Do you know whether the Disclosure  
 22 Statement has been amended?  
 23 MR. SIDMAN: Objection to the form.  
 24 A. I don't believe the Disclosure  
 25 Statement has been amended, but there has been a

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1 J. DUBEL - CONFIDENTIAL  
 2 Q. And with respect to the next  
 3 paragraph starting with, "Second, the  
 4 rehabilitator has designed the plan to address  
 5 potential competing interests of policyholders  
 6 with claims in the short-term as compared to  
 7 others with claims not anticipated for decades."  
 8 Do you see that paragraph?  
 9 A. I do.  
 10 Q. Do you agree with the summary of  
 11 the plan that's contained in this second  
 12 paragraph?  
 13 A. Let me just review it again. I  
 14 believe that there have been payment -- there have  
 15 been certain changes to the plan that would modify  
 16 some of the language in here.  
 17 Q. Can you point us to where that  
 18 might be?  
 19 A. I believe that FGIC has -- no, I  
 20 take that back. I was looking at the 150 days. I  
 21 was thinking of a different time frame.  
 22 No. In general, yes, this is --  
 23 this is fine. Again, there may be minor little  
 24 changes that modify this, but they would all have  
 25 been laid out in black lines of the plan that

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 would have been filed.</p> <p>3 Q. And who were the policyholders that</p> <p>4 these two paragraphs that you just reviewed</p> <p>5 addressed at?</p> <p>6 MR. SIDMAN: Objection to form.</p> <p>7 Q. Addressed to.</p> <p>8 A. It would be any policyholder that</p> <p>9 would exist at the time of the effective date of</p> <p>10 the plan.</p> <p>11 Q. Would it include policyholders of</p> <p>12 trusts dealing with RMBS's?</p> <p>13 A. It -- it would include any</p> <p>14 policyholders that FGIC has that exist at the time</p> <p>15 of the effective date of the plan.</p> <p>16 Q. Including trusts involved with</p> <p>17 issuing RMBS securities that FGIC had issued</p> <p>18 policies to. Correct?</p> <p>19 MR. SIDMAN: Objection to the form.</p> <p>20 A. If there were trusts in -- in place</p> <p>21 at the time that -- that policy issued by FGIC</p> <p>22 then, yes.</p> <p>23 Q. And turn the page to page 3 for a</p> <p>24 moment. It says -- the paragraph including,</p> <p>25 "Third, in an effort to mitigate FGIC's</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 liabilities and increase recoveries to</p> <p>3 policyholders."</p> <p>4 Do you see that paragraph?</p> <p>5 A. I do.</p> <p>6 Q. Had you previously reviewed this</p> <p>7 paragraph?</p> <p>8 A. Previously I -- I would have, yes.</p> <p>9 Q. And do you agree with the summary</p> <p>10 set forth in the paragraph?</p> <p>11 A. Let me just read it real quick.</p> <p>12 Q. Sure.</p> <p>13 A. Subject to the fact that time is</p> <p>14 ticking -- you know, has gone on and there were</p> <p>15 have been certain modifications because of events</p> <p>16 that have occurred, yes, I agree with that.</p> <p>17 Q. And what modifications have</p> <p>18 occurred?</p> <p>19 A. I'm not a lawyer. I'm just trying</p> <p>20 to read it from a plain English point of view, but</p> <p>21 it -- the way I read it implies that the plan</p> <p>22 would contemplate as part of the plan doing</p> <p>23 certain commutations. I think those commutations</p> <p>24 were all done, not as part of the plan, but -- but</p> <p>25 in the rehabilitation proceedings prior to the</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 plan going effective.</p> <p>3 Q. But these are CDS commutations.</p> <p>4 That's what that paragraph is referring to.</p> <p>5 Correct?</p> <p>6 MR. SIDMAN: Objection to the form.</p> <p>7 A. It's referring to certain CDS</p> <p>8 commutations, yes.</p> <p>9 Q. To only CDS commutations. Isn't</p> <p>10 that correct?</p> <p>11 MR. SIDMAN: Objection to the form.</p> <p>12 A. As I said, it's referring to</p> <p>13 certain CDS commutations.</p> <p>14 Q. But it's not referring to commuting</p> <p>15 policies issued to RMBS trusts; is it?</p> <p>16 A. This paragraph does not.</p> <p>17 Q. Do you know whether this Disclosure</p> <p>18 Statement contains disclosure concerning commuting</p> <p>19 specific RMBS policies issued to trusts?</p> <p>20 MR. SIDMAN: Object to the form.</p> <p>21 Are you asking him to review the entire</p> <p>22 Disclosure Statement?</p> <p>23 MR. GOODMAN: I'm asking to his</p> <p>24 knowledge.</p> <p>25 Q. Do you know?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. To my knowledge, there were not</p> <p>3 specific references to commutations of policies</p> <p>4 that were issued to trustees of RMBS</p> <p>5 securitizations.</p> <p>6 Q. Turn to page 20 of the Disclosure</p> <p>7 Statement, please, Mr. Dubel, and I ask you to</p> <p>8 turn your attention to the bottom of page 20 of</p> <p>9 the paragraph starting with, "Provisions of the</p> <p>10 plan relevant to the policy restructuring are in</p> <p>11 the restructured policy terms."</p> <p>12 Do you see that?</p> <p>13 A. That one particular paragraph?</p> <p>14 Q. Yes.</p> <p>15 A. Okay. I do see that.</p> <p>16 Q. Do you recall reviewing that</p> <p>17 paragraph?</p> <p>18 A. I do.</p> <p>19 Q. And do you agree with the sentence</p> <p>20 beginning on page -- top of 20, "Consistent with</p> <p>21 the goal of the plan, the rehabilitator developed</p> <p>22 the restructured policy terms" --</p> <p>23 A. I'm sorry. Top of page 20?</p> <p>24 Q. Yes.</p> <p>25 MR. SIDMAN: 21 you mean?</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. GOODMAN: What's that?</p> <p>3 MR. SIDMAN: I think you meant 21.</p> <p>4 Q. Oh, 21. I apologize. Yes.</p> <p>5 A. Hold on. I can't tell whether</p> <p>6 that's a carry-over paragraph, but I see where</p> <p>7 you're referring to.</p> <p>8 Q. So do you see that paragraph, and</p> <p>9 it states, "Consistent with the goal of the plan,</p> <p>10 the rehabilitator developed the restructured</p> <p>11 policy terms to maximize the extent to which FGIC</p> <p>12 policyholders are treated fair and</p> <p>13 equitable manner -- in a fair and equitable</p> <p>14 manner."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Do you agree with that statement?</p> <p>18 A. I do.</p> <p>19 Q. And the next sentence that says,</p> <p>20 "The restructured policy terms are designed to</p> <p>21 address challenges the rehabilitator faced in</p> <p>22 achieving those goals."</p> <p>23 Is that correct?</p> <p>24 MR. SIDMAN: Objection. You're</p> <p>25 slightly misreading the sentence.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 But you see the sentence?</p> <p>3 THE WITNESS: I see the sentence.</p> <p>4 A. I think you meant "this goal."</p> <p>5 Yes, I -- I see that sentence.</p> <p>6 Q. And do you agree with that</p> <p>7 sentence?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And what does the sentence</p> <p>10 referring to in the defined term "restructured</p> <p>11 policy terms," if you know?</p> <p>12 A. I'm sorry. What --</p> <p>13 Q. What -- what is this sentence</p> <p>14 referring to with respect to the defined term</p> <p>15 "restructured policy terms," if you know?</p> <p>16 A. Which sentence, the second sentence</p> <p>17 or the first --</p> <p>18 Q. Yeah, "The restructured policy</p> <p>19 terms are designed to address the challenges the</p> <p>20 rehabilitator faced in achieving this goal."</p> <p>21 A. I believe the term "restructured</p> <p>22 policy terms" references a separate part of the</p> <p>23 plan of rehabilitation which describes how the</p> <p>24 policies will be restructured.</p> <p>25 Q. And that's an exhibit to the plan.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Correct?</p> <p>3 MR. SIDMAN: Objection.</p> <p>4 A. I'd have to see if it was an</p> <p>5 exhibit an annex or what. I just don't remember</p> <p>6 what the technical portion of it is.</p> <p>7 Q. Do you recall whether the</p> <p>8 restructured policy terms provided for the right</p> <p>9 to FGIC -- for FGIC to commute the policies --</p> <p>10 MR. SIDMAN: Objection.</p> <p>11 Q. -- under the restructured policy</p> <p>12 terms?</p> <p>13 MR. SIDMAN: Objection to the form.</p> <p>14 He already answered the question.</p> <p>15 A. I don't recall which document that</p> <p>16 right would be in.</p> <p>17 Q. Okay. I'm -- I'm referring to the</p> <p>18 restructured policy terms.</p> <p>19 Do you know whether there's a</p> <p>20 provision in the restructured policy terms which</p> <p>21 permits FGIC to commute policies that are governed</p> <p>22 by the restructured policy terms?</p> <p>23 MR. SIDMAN: Objection to form.</p> <p>24 A. I don't recall, but I'd be happy to</p> <p>25 look it over and see if I --</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. GOODMAN: Okay. We're going to</p> <p>3 mark this as Exhibit 2.</p> <p>4 (Dubel Exhibit 2 marked for</p> <p>5 identification.)</p> <p>6 Q. Mr. Dubel, do you have what's been</p> <p>7 identified as Exhibit No. 2?</p> <p>8 A. Dubel-2?</p> <p>9 Q. Yes.</p> <p>10 A. I do.</p> <p>11 Q. Do you know what Dubel-2 is?</p> <p>12 A. I'm not sure of the exact technical</p> <p>13 term, but it looks like it's the approval cover</p> <p>14 note that Justice -- Judge Lynn Cohen attached to</p> <p>15 the plan approval order which Justice Lynn Cohen</p> <p>16 signed and attached to that as an exhibit -- as</p> <p>17 Exhibit 1 as the First Amended Plan of</p> <p>18 Rehabilitation for Financial Guaranty Insurance</p> <p>19 Company.</p> <p>20 Q. And I'd ask you to turn to Exhibit</p> <p>21 B to the plan entitled Restructured Policy Terms.</p> <p>22 It's towards the back.</p> <p>23 A. Yes.</p> <p>24 Q. And in terms of the Restructured</p> <p>25 Policy Terms, do you know whether the restructured</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 terms provides for the commutation of the policies</p> <p>3 that were issued to the RMBS trust?</p> <p>4 MR. SIDMAN: Object to the form.</p> <p>5 A. Let me just take a look.</p> <p>6 Q. Sure.</p> <p>7 A. I apologize. Could you repeat your</p> <p>8 question? It's been a while.</p> <p>9 Q. Do you know whether the</p> <p>10 Restructured Policy Terms provides for the</p> <p>11 commutation of the policies that were issued to</p> <p>12 the RMBS trusts --</p> <p>13 MR. SIDMAN: Objection.</p> <p>14 Q. -- following your review of the</p> <p>15 revised policy terms?</p> <p>16 A. Yes.</p> <p>17 Q. It does provide?</p> <p>18 A. I believe it does.</p> <p>19 Q. And can you point to where in the</p> <p>20 revised policy terms it permits the commutation of</p> <p>21 the policies issued to the RMBS trust?</p> <p>22 MR. SIDMAN: Object to the form.</p> <p>23 Q. Is there a specific provision that</p> <p>24 you saw?</p> <p>25 A. In Article 3 under the heading</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Miscellaneous, this is on page B-9, Section 3.1</p> <p>3 integration of plan into each policy, and this is,</p> <p>4 again, Exhibit B which is the Restructured Policy</p> <p>5 Terms that you were referring to earlier. I'm not</p> <p>6 a lawyer, so, you know, my interpretation may be</p> <p>7 not exact, but the way I read this it says from</p> <p>8 and after the effective date the plan, which is</p> <p>9 referring to the First Amended Plan of</p> <p>10 Rehabilitation for Financial Guaranty Insurance</p> <p>11 Company, says, "The plan shall become part of each</p> <p>12 policy and shall supersede any provision of any</p> <p>13 policy that is inconsistent with the plan." And</p> <p>14 little two, "I govern treatment of all claims</p> <p>15 under the policies that have not been paid in full</p> <p>16 as of the date of the order of rehabilitation."</p> <p>17 Q. Okay. Let's go back to Exhibit 1,</p> <p>18 which is the Disclosure Statement, page 21? The</p> <p>19 first full paragraph on page 21, the CPP DPO</p> <p>20 structure, do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Are you familiar with this</p> <p>23 paragraph? Have you read this -- seen this</p> <p>24 paragraph before?</p> <p>25 MR. SIDMAN: Object to the form.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I have seen it before.</p> <p>3 Q. And do you agree with the summary</p> <p>4 that's in it?</p> <p>5 A. Let me just quickly read through it</p> <p>6 again.</p> <p>7 I do.</p> <p>8 Q. Okay. And am I right that what</p> <p>9 this paragraph provides is that -- what the</p> <p>10 Department of Finance is trying to effectuate is</p> <p>11 that a -- a current claimant today is going to</p> <p>12 receive X cents on the dollar and that a claimant</p> <p>13 17 years from today will receive at least that</p> <p>14 same X amount on the dollar that the earlier</p> <p>15 claimant received?</p> <p>16 MR. SIDMAN: Object to the form.</p> <p>17 You can answer, if you can.</p> <p>18 A. It's attempting to do that subject</p> <p>19 to all of the provisions in the plan.</p> <p>20 Q. Okay. And the next paragraph</p> <p>21 states that: "This approach" -- and it's</p> <p>22 referring to, I believe, the paragraph above,</p> <p>23 "This approach is designed so that all</p> <p>24 policyholders receive the same percentage (or CPP)</p> <p>25 of cash on account of their permitted claims</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 whether arising in the next five years or in the</p> <p>3 next few decades."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you agree with that statement?</p> <p>7 A. I agree -- obviously, it's subject</p> <p>8 to the actual plan of rehabilitation which is</p> <p>9 outlined in the Restructured Policy Terms. Things</p> <p>10 could be modified.</p> <p>11 Q. And we'll talk about modifications</p> <p>12 in a moment, but as we mentioned earlier, the</p> <p>13 purpose of the Disclosure Statement is to describe</p> <p>14 the plan in layman's terms. Isn't -- isn't that</p> <p>15 correct?</p> <p>16 MR. SIDMAN: Objection to form.</p> <p>17 A. That's what I believe it to be.</p> <p>18 I'm not a lawyer.</p> <p>19 Q. Okay.</p> <p>20 A. It's a unique document in a</p> <p>21 rehabilitation, and I don't know that there's an</p> <p>22 actual legal requirement to have this document in</p> <p>23 the rehabilitation.</p> <p>24 Q. But lawyers can be tricky, I guess,</p> <p>25 sometimes. Right? So --</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. Not my lawyers.</p> <p>3 Q. Okay.</p> <p>4 A. Not my lawyers.</p> <p>5 Q. Fair enough. Fair enough.</p> <p>6 Turn to paragraph --</p> <p>7 MR. SLACK: Maybe lawyers taking</p> <p>8 depositions.</p> <p>9 MR. GOODMAN: It's a joke.</p> <p>10 Q. If you could, turn to Exhibit 2 for</p> <p>11 a moment, Section 9.3.</p> <p>12 A. On page 27? Is that what you're</p> <p>13 referring to?</p> <p>14 Q. Uh-huh. And we're talking about</p> <p>15 how the Disclosure Statement -- I guess earlier</p> <p>16 how the Disclosure Statement is subject to the</p> <p>17 plan. 9.3 starts with the heading Modification.</p> <p>18 Correct?</p> <p>19 A. I'm sorry. I didn't understand</p> <p>20 what you said before. The Disclosure Statement</p> <p>21 is --</p> <p>22 Q. Fair enough. Strike that.</p> <p>23 Let's just turn to Section 9.3,</p> <p>24 page 27 of Exhibit 2.</p> <p>25 A. Yes.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. And that's entitled To</p> <p>3 Modification.</p> <p>4 A. It's entitled Modification.</p> <p>5 Q. Okay. Correct. And it states from</p> <p>6 time -- from and after -- let me start over.</p> <p>7 "From and after the effective date,</p> <p>8 only the NYSDFS may modify the plan and only to</p> <p>9 the extent it determines necessary for the fair</p> <p>10 and equitable treatment of policyholders in</p> <p>11 general provided, however, that the NYSDFS shall</p> <p>12 obtain Court approval for material modification."</p> <p>13 Correct?</p> <p>14 MR. SIDMAN: Objection to the form.</p> <p>15 You missed a word, but that's okay.</p> <p>16 MR. GOODMAN: Okay.</p> <p>17 Q. Do you agree that that's what's</p> <p>18 stated in Section 9.3 of the plan subject to your</p> <p>19 client -- your attorney's --</p> <p>20 A. I'll agree that 9.3 states certain</p> <p>21 stuff. It is what it -- it says what it says. If</p> <p>22 you're asking me a question, I can respond to the</p> <p>23 question.</p> <p>24 Q. Okay. What's your understanding --</p> <p>25 A. But the wording -- the wording is</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 what it is.</p> <p>3 Q. Yeah. And what's your</p> <p>4 understanding of 9.3 of the plan?</p> <p>5 A. That from and after the effective</p> <p>6 date, only the NYSDFS, as I referred to before as</p> <p>7 the DFS, may modify the plan and only to the</p> <p>8 extent that it determines it's necessary for the</p> <p>9 fair and equitable treatment of policyholders in</p> <p>10 general provided, however, that DFS shall obtain</p> <p>11 prior Court approval for any material</p> <p>12 modification.</p> <p>13 Q. Okay. And you're familiar with the</p> <p>14 proposed ResCap FGIC settlement with -- aren't</p> <p>15 you? Is that correct?</p> <p>16 MR. SIDMAN: Objection to form.</p> <p>17 Q. Fair enough. Strike that.</p> <p>18 Are you familiar with -- are you</p> <p>19 familiar with the ResCap FGIC settlement --</p> <p>20 MR. SIDMAN: Object to the form.</p> <p>21 Q. -- that's at issue before the</p> <p>22 Court?</p> <p>23 A. Are you referring to the settlement</p> <p>24 agreement?</p> <p>25 Q. Yes, the settlement agreement.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I am familiar with it, yes.</p> <p>3 Q. Were you involved in the</p> <p>4 negotiations of that agreement?</p> <p>5 A. I was.</p> <p>6 Q. Did you have a significant</p> <p>7 involvement in that settlement agreement?</p> <p>8 MR. SIDMAN: Objection to the form.</p> <p>9 You can answer.</p> <p>10 A. Yes.</p> <p>11 Q. Spent a lot of hours negotiating on</p> <p>12 it?</p> <p>13 MR. SIDMAN: Object to the form.</p> <p>14 A. Yes.</p> <p>15 Q. How many hours, would you say?</p> <p>16 A. I'm fortunately not required to</p> <p>17 keep time records, like attorneys are. But it</p> <p>18 was a -- all of that which went into the</p> <p>19 settlement agreement would have been over a period</p> <p>20 of many months and many, many hours. I don't have</p> <p>21 a time record to know how many exact hours, but it</p> <p>22 was a lot of time.</p> <p>23 Q. And when did the negotiations</p> <p>24 begin?</p> <p>25 A. On the --</p>



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Q. On the settlement --

A. -- actual document -- the settlement agreement, I don't recall. But on the concepts that were incorporated into the settlement agreement --

Q. Fair enough.

A. -- it would have been sometime in mid to the latter part of January of 2013. It was all part of the mediation process.

THE WITNESS: Could I interrupt for one second? Could I ask one of you guys down there to throw me a water, please? Make that two, please, for the court reporter, also?

Q. Mr. Dubel, do you know whether the settlement is a condition for the rehabilitation plan to go effective?

MR. SIDMAN: Object to the form.

A. I'm not an attorney, so I can't answer that question.

Q. But you know the plan has not gone effective yet. Isn't that correct?

A. That's correct.

Q. And the plan of reorganization has provisions regarding the conditions to the

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effective date. Are you familiar with those?

MR. SIDMAN: Objection to the form.

A. Which plan of reorganization are you referring to?

Q. I'm sorry, the Plan of Rehabilitation. Fair enough. Exhibit No. 2.

A. Okay. I'm sorry.

Q. Does Exhibit -- the Plan of Rehabilitation, Exhibit No. 2 have, conditions -- list conditions before it will go effective?

A. Give me a second. Let me just glance at it.

Q. Okay. Well, I'll refer you to Section 6.1 of Exhibit 2.

A. The sections refers to conditions precedent to the effective date, yes.

Q. And do you know whether the settlement is a condition to the effective date of the plan?

A. Again, you're asking me for a legal interpretation, and I'm not a -- I'm not the attorney. I didn't draft this document, so I would not want to --

Q. I'm asking -- I'm asking you for a

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layman's understanding.

Was it your understanding that the plan would ever be conditioned upon the ResCap settlement?

MR. SIDMAN: Objection to the form.

A. Again, I'm not an attorney, so I can't answer that question.

Q. I'm not asking your legal view. I'm just asking, was it ever your understanding that the plan of reorganization would be conditioned upon entering into a settlement -- entering into the ResCap settlement that we've been discussing.

MR. SIDMAN: Same objection.

MR. SLACK: I'm going -- I'm going to say, if he has an understanding that's based -- he doesn't have an understanding, but if he does, if it's based on communications with counsel, I instruct you not to answer.

MR. SIDMAN: Same instruction.

A. And I'm assuming you're referring to the Plan of Rehabilitation?

Q. Yes.

A. Because I think you had stated the

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plan of reorganization, so --

Q. If I did that again, I'm apologizing.

A. Again, I'm not an attorney. Any knowledge I have about these conditions and whether or not that is something that has to do with the settlement -- the settlement agreement is tied into this effective date, I would have to consult with counsel who drafted this plan.

Q. Okay. Well, put it this way, was it ever your -- the settlement negotiations began in earnest for the current settlement in January 2013. Correct?

MR. SIDMAN: Objection.

A. Yeah -- well, they started it. You're using the term "earnest." I wouldn't, you know.

Q. Okay. Use your term --

A. They started.

Q. -- they started in earnest. Okay.

A. No.

MR. SIDMAN: You said in "earnest." He said "started."

MR. GOODMAN: Okay. They started.

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Okay.

Q. Prior to January of 2013, did you believe -- was it your understanding that you could not -- that FGIC could not confirm its plan of rehabilitation until it settled with ResCap?

MR. SIDMAN: Once again, if -- I instruct the witness not to answer if that understanding is based on communications with counsel, if he has any understanding.

A. I don't have any understanding.

Q. So you don't know whether the FGIC rehabilitation plan could have been confirmed in December 2012 if all the policyholders and all the objectors had agreed?

MR. SIDMAN: Objection. Asked and answered.

A. As I stated earlier, the concept of a settlement agreement first came up in January of 2013. So if you are asking me if in December the plan could have gone effective, if it was effective at that point in time, it would have been prior to any discussion of the things contemplated in the settlement agreement, which commenced discussions in January of 2013.

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A. I just answered your question.

Q. So there were no negotiations?

MR. SIDMAN: Objection to the form.

A. I think I just answered your question.

Q. Is --

A. Three questions ago.

Q. So is that a yes? Is that a yes, there were no negotiations?

THE WITNESS: Could you repeat my answer -- read back my answer for me, please?

(The requested portion of the record was read.)

Q. So you only sought input. There were no negotiations. That's your answer.

MR. SIDMAN: Objection to the form.

He's -- he's made his answer already three times.

Q. I asked a question.

A. The answer that the court reporter -- that I stated earlier and the court reporter just read back is -- is what I stand by.

Q. And am I correct that what you mean by your answer is that there were no negotiations?

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Q. You were very involved in the negotiations of the Plan of Rehabilitation. Correct?

MR. SIDMAN: Object to the form.

A. There were not negotiations on the Plan of Rehabilitation.

Q. Okay. You were very involved in the promulgation of the Plan of Rehabilitation?

MR. SIDMAN: Object to the form.

A. I don't know what you mean by "the promulgation." What we did was we sought input on the Plan of Rehabilitation from any number of parties, anyone who had an interest in talking to us. The rehabilitator does not have a requirement, as I understand it, to -- to seek the input. He did. He does not have a requirement in the rehabilitation process to go out and obtain votes, and there were none. So there weren't negotiations. This was a situation where we sought input from parties.

Q. And what your -- so in your view, there was no negotiations that went into getting the plan approved. Is that -- is that correct?

MR. SIDMAN: Object to the form.

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MR. SIDMAN: Objection. We've been through this already.

MR. SLACK: Objection to the form. Asked and answered. Badgering the witness.

MR. SIDMAN: Let's move on.

You can answer.

A. I believe I just answered that question now for the third or fourth time, and I've answered it and had the court reporter read it back, and I stand by my answer.

MR. GOODMAN: Well, I move to strike the witness' answer as nonresponsive. I'm going to move on.

Q. Okay. Had the ResCap settlement not been finalized and signed by the parties, is -- is it your understanding that FGIC could have gone effective under its Plan of Rehabilitation?

MR. SIDMAN: Objection. Asked and answered. You can answer it.

A. I believe I answered the question already.

Q. And what was your answer?

THE WITNESS: Would you go back and

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 re-read it?</p> <p>3 THE COURT REPORTER: The one I just</p> <p>4 read?</p> <p>5 THE WITNESS: No. I think it was</p> <p>6 after that.</p> <p>7 Q. So, in other words, you need to go</p> <p>8 back into the record to find your answer? Is that</p> <p>9 what you're saying, Mr. Dubel?</p> <p>10 A. No. I'm saying I answered the</p> <p>11 question already.</p> <p>12 Q. Okay. And so that we have to go</p> <p>13 search the record for your answer? You don't</p> <p>14 recall your answer?</p> <p>15 MR. SIDMAN: I think he just said</p> <p>16 that he already answered the question.</p> <p>17 MR. GOODMAN: I don't believe he's</p> <p>18 answered the question. I've changed the</p> <p>19 question.</p> <p>20 MR. SIDMAN: What is your current</p> <p>21 question, Counsel?</p> <p>22 MR. GOODMAN: He said --</p> <p>23 Q. If the ResCap settlement was not</p> <p>24 entered into, was not signed, not negotiated, is</p> <p>25 it your understanding that the FGIC plan could</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 have gone -- can go effective? Is it your</p> <p>3 understanding?</p> <p>4 MR. SIDMAN: I'm going to object on</p> <p>5 the same basis as before. Asked and answered.</p> <p>6 But I also want to instruct the witness not to</p> <p>7 answer if -- if his understanding -- if he has</p> <p>8 an understanding is based on any</p> <p>9 communications with counsel.</p> <p>10 A. First off, I don't believe you</p> <p>11 stated the same question over again, so maybe if</p> <p>12 you did, I apologize.</p> <p>13 Q. That's okay.</p> <p>14 A. But could you repeat it one last</p> <p>15 time? I'm sorry.</p> <p>16 Q. My question is: Is it your</p> <p>17 understanding, I'm not asking for your</p> <p>18 understanding from discussions with counsel, your</p> <p>19 understanding of the Plan of Rehabilitation, could</p> <p>20 it have gone effective if FGIC had not entered</p> <p>21 into a settlement with ResCap?</p> <p>22 MR. SIDMAN: Same objection. Same</p> <p>23 instruction.</p> <p>24 A. I guess the answer is yes. If</p> <p>25 there was no settlement agreement with ResCap, the</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 answer is yes, the plan could go effective. But</p> <p>3 it's effective so the plan is subject to many</p> <p>4 other issues that I'm not an attorney to be able</p> <p>5 to interpret whether it could have gone effective</p> <p>6 or not because of all those other issues.</p> <p>7 Q. All right. Thank you.</p> <p>8 MR. SIDMAN: Is this a good time to</p> <p>9 take a break?</p> <p>10 MR. GOODMAN: Sure.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 THE VIDEOGRAPHER: This is the end</p> <p>13 of Videotape No. 2 of the deposition John</p> <p>14 Dubel, and we're going off the record. The</p> <p>15 time is 4:05 p.m., July 10, 2013.</p> <p>16 (Recess taken.)</p> <p>17 THE VIDEOGRAPHER: We're now on the</p> <p>18 record beginning approximately at 4:17 p.m.,</p> <p>19 July 10th, 2013. This will begin Videotape</p> <p>20 No. 3 of the deposition of John Dubel.</p> <p>21 (Dubel Exhibit 3 marked for</p> <p>22 identification.)</p> <p>23 Q. Mr. Dubel, you should have in front</p> <p>24 of you -- soon to have what's been marked as Dubel</p> <p>25 Exhibit 3.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. Hold on one second.</p> <p>3 (Discussion off the record.)</p> <p>4 Q. Mr. Dubel, what is Dubel Exhibit 3?</p> <p>5 A. Dubel Exhibit 3 is the Affidavit of</p> <p>6 Michael W. Miller in Further Support of Approval</p> <p>7 of the First Amended Plan of Rehabilitation in the</p> <p>8 Matter of Rehabilitation of Financial Guaranty</p> <p>9 Insurance Company.</p> <p>10 Q. Have you seen Dubel Exhibit No. 3</p> <p>11 before?</p> <p>12 A. I have.</p> <p>13 Q. When did you first see it?</p> <p>14 A. This exhibit? On or after it would</p> <p>15 have been filed with the -- the court in</p> <p>16 the Supreme Court of the State of New York.</p> <p>17 Q. Did you have discussions with</p> <p>18 Mr. Miller prior to his filing of this</p> <p>19 affidavit -- signing of this affidavit?</p> <p>20 MR. SIDMAN: You can answer that</p> <p>21 question. I would instruct you not to reveal</p> <p>22 the subject of that discussion, but you can</p> <p>23 ask -- you answer the fact that -- whether or</p> <p>24 not you had discussions with Mr. Miller.</p> <p>25 A. Okay. I'm sorry. Could you repeat</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 the question?</p> <p>3 Q. Did you have discussions with</p> <p>4 Mr. Miller prior to his signing of Exhibit 3?</p> <p>5 A. Yes.</p> <p>6 Q. And was counsel present during</p> <p>7 those discussions?</p> <p>8 MR. SIDMAN: You can answer.</p> <p>9 A. I'm not sure what discussions</p> <p>10 you're referring to other than -- you asked if I</p> <p>11 had discussions with Mr. Miller?</p> <p>12 Q. Yes.</p> <p>13 A. Well, you know, over the years I've</p> <p>14 had many discussions with Mr. Miller.</p> <p>15 Q. With respect to Debtor's Exhibit</p> <p>16 No -- Dubel Exhibit No. 3.</p> <p>17 A. Okay. Counsel would have been</p> <p>18 present, yes.</p> <p>19 Q. At all times?</p> <p>20 A. To the best of my knowledge, yes.</p> <p>21 Q. Did you provide any input</p> <p>22 into Dubel Exhibit 3?</p> <p>23 A. What do you mean by "input"?</p> <p>24 Q. Did you offer any assistance?</p> <p>25 MR. SIDMAN: I'm going to object</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 and just instruct the witness to answer the</p> <p>3 question yes or no and not provide the -- the</p> <p>4 actual information or assistance, if any, that</p> <p>5 you provided in connection with Dubel Exhibit</p> <p>6 3.</p> <p>7 A. Can I ask my counsel a</p> <p>8 clarification?</p> <p>9 Q. In order to ask -- answer this</p> <p>10 question, you need to discuss the answer with your</p> <p>11 attorney? Is that what you're saying?</p> <p>12 A. I'm not sure I -- I'm not sure I</p> <p>13 understand exactly what you're referring to as</p> <p>14 "input" and as it relates to this, so I'd like to</p> <p>15 make sure that I don't say anything that's --</p> <p>16 comes through, you know, from a result of</p> <p>17 privileged conversations that might have been had</p> <p>18 with counsel or privileged, you know, work product</p> <p>19 communications. That's my concern. That's why.</p> <p>20 Q. I'm not asking you about the</p> <p>21 substance of those conversations.</p> <p>22 MR. SLACK: But I will say this, is</p> <p>23 if the witness at any time has a concern that</p> <p>24 his answer is going to disclose</p> <p>25 attorney-client or work product, that is the</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 time where it's completely appropriate for him</p> <p>3 to talk to his lawyers.</p> <p>4 So I would caution the witness.</p> <p>5 I'm fine if you -- if you're -- if you're</p> <p>6 confident you can answer the question without</p> <p>7 revealing attorney-client or work product, you</p> <p>8 should go ahead and do that. If -- if</p> <p>9 you're -- if you're not confident, you should</p> <p>10 have a conversation with your counsel.</p> <p>11 MR. SIDMAN: Do you want to go off</p> <p>12 the record for a second?</p> <p>13 THE WITNESS: Please.</p> <p>14 MR. GOODMAN: Sure.</p> <p>15 THE VIDEOGRAPHER: We're going off</p> <p>16 the record. The time is 4:22 p.m.</p> <p>17 (Discussion off the record.)</p> <p>18 THE VIDEOGRAPHER: We're back on</p> <p>19 the record. The time is 4:24 p.m.</p> <p>20 Q. Did you have any discussions with</p> <p>21 Mr. Miller prior to Mr. Miller signing Dubel</p> <p>22 Exhibit 3 about Dubel Exhibit 3?</p> <p>23 A. No.</p> <p>24 Q. Have you reviewed Dubel Exhibit 3</p> <p>25 prior to seeing it today?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. Yes.</p> <p>5 Q. When was the first time you</p> <p>6 reviewed it?</p> <p>7 A. I think as I answered before, it</p> <p>8 was after it -- after it was filed on or about --</p> <p>9 I think the date is December 12th of 2012. I -- I</p> <p>10 did not see it prior to it -- its completion.</p> <p>11 Q. I apologize. I might have missed</p> <p>12 that.</p> <p>13 A. Yeah. I did not see it prior to</p> <p>14 its completion.</p> <p>15 Q. And you had no discussions with</p> <p>16 Mr. Miller about the substance of his affidavit</p> <p>17 prior to first seeing it after it was filed?</p> <p>18 MR. SIDMAN: Objection to the form.</p> <p>19 Once again, I instruct the witness to answer</p> <p>20 yes or no with respect to -- with respect to</p> <p>21 the question as to whether or not he had</p> <p>22 sub- -- discussions regarding the substance of</p> <p>23 the affidavit not revealing the actual</p> <p>24 substance of those conversations.</p> <p>25 A. I had discussions with Mr. Miller</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 prior to his filing of the affidavit. I -- I</p> <p>3 don't -- I did not have discussions about his</p> <p>4 affidavit or any of the information in the</p> <p>5 affidavit that was subsequently filed that -- that</p> <p>6 I knew were going to be in the form of this, but I</p> <p>7 had discussions with him and, through counsel,</p> <p>8 provided input to -- to Mr. Miller for a variety</p> <p>9 of different things.</p> <p>10 Q. Well, can you turn to page 9,</p> <p>11 paragraph 28, please? What is your understanding</p> <p>12 of -- of paragraph 28?</p> <p>13 MR. SIDMAN: Once again, I would</p> <p>14 instruct the witness that if his understanding</p> <p>15 is based on communications with counsel,</p> <p>16 that -- that do not answer the question. If</p> <p>17 it is based on your independent understanding,</p> <p>18 not -- not based on communications with</p> <p>19 counsel, then you can answer the question.</p> <p>20 A. My understanding of everything in</p> <p>21 this affidavit, you know, and -- I'm sorry, in</p> <p>22 paragraph 28 of this affidavit, is based upon</p> <p>23 discussions with counsel.</p> <p>24 MR. SIDMAN: On that basis, I'm</p> <p>25 going to instruct you not to answer the</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 question.</p> <p>3 Q. So let me make sure I understand</p> <p>4 the basis for the instruction. Is it currently</p> <p>5 your understanding that permitted policy claims</p> <p>6 can recover between 27 and 30 percent of the</p> <p>7 permitted policy claims at a 10 to 20 percent</p> <p>8 illustrative discount rate?</p> <p>9 MR. SIDMAN: Once again, same</p> <p>10 instruction. If that is -- if that</p> <p>11 understanding -- the same question asked a</p> <p>12 different way. If that understanding is based</p> <p>13 on communications with counsel, then I</p> <p>14 instruct you not to answer it, and it sounds</p> <p>15 like it was, but you decide that yourself, Mr.</p> <p>16 Dubel.</p> <p>17 A. Could you repeat the question,</p> <p>18 please?</p> <p>19 Q. Is it currently your understanding</p> <p>20 that permitted policy claims can recover between</p> <p>21 27 and 30 percent of the permitted policy claims</p> <p>22 at a 10 to 20 percent illustrative discount rate?</p> <p>23 Illustrative. Excuse me.</p> <p>24 MR. SIDMAN: Same instruction.</p> <p>25 A. What you're referring to is a -- a</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 base case scenario which is a set of projections</p> <p>3 that go out over 41 years and, obviously,</p> <p>4 projections are -- are just that. They're --</p> <p>5 they're not a guarantee of anything, especially</p> <p>6 when you have such long-term projections that have</p> <p>7 such high levels of risk in them. So it could be</p> <p>8 at those illustrative discount rates. It could be</p> <p>9 27 to 30 percent. It could be higher, or it could</p> <p>10 be an awful lot lower depending on the actual</p> <p>11 results.</p> <p>12 Q. What's your understanding of the</p> <p>13 "base case scenario," the meaning of the "base</p> <p>14 case scenario"?</p> <p>15 MR. SIDMAN: I will instruct the</p> <p>16 witness not to answer that question if his</p> <p>17 understanding of the -- the meaning of the</p> <p>18 "base case scenario" is based on the</p> <p>19 communications with counsel.</p> <p>20 A. Okay. I can read what -- how it's</p> <p>21 defined, the "base case scenario," but my</p> <p>22 understanding of the meanings of it and how</p> <p>23 it's -- how it was developed and all are -- are</p> <p>24 the result of discussions with counsel.</p> <p>25 Q. I'm not talking about how it was</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 developed.</p> <p>3 Do you have, independent of your</p> <p>4 discussions with counsel, an understanding of the</p> <p>5 definition of "base case"?</p> <p>6 MR. SIDMAN: Same --</p> <p>7 A. If I can refer back to --</p> <p>8 Q. Yes, please.</p> <p>9 MR. SIDMAN: Same instruction.</p> <p>10 Q. Maybe I can assist you. The "base</p> <p>11 case scenario" means -- is it your understanding</p> <p>12 that the "base case scenario" means FGIC's then</p> <p>13 current expectation of future claims, investment</p> <p>14 performance, recoveries, financial markets and</p> <p>15 other factors of relevance to CPP, re-evaluations</p> <p>16 based on the circumstances, events and projections</p> <p>17 that FGIC anticipates are reasonably likely to</p> <p>18 occur?</p> <p>19 MR. SIDMAN: Objection. Once</p> <p>20 again, if you're asking him for his</p> <p>21 understanding, if it's based on counsel --</p> <p>22 communications with counsel, I instruct the</p> <p>23 witness not to answer.</p> <p>24 Are you referring to a particular</p> <p>25 provision? Maybe you can point it out to him</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 so that --</p> <p>3 MR. GOODMAN: It's in --</p> <p>4 MR. SIDMAN: If you're citing to a</p> <p>5 particular provision, maybe you --</p> <p>6 Q. If you look at Exhibit 2, it's in</p> <p>7 the definition section.</p> <p>8 A. That's where it was? I'm sorry.</p> <p>9 Q. It's okay. It comes after the</p> <p>10 plan.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Page A2.</p> <p>13 A. I'm sorry. Go ahead with your</p> <p>14 question.</p> <p>15 Q. Do you have an independent</p> <p>16 understanding of the base case scenario,</p> <p>17 independent upon discussions with counsel, do you</p> <p>18 understand the meaning of that provision?</p> <p>19 MR. SIDMAN: Object to the form.</p> <p>20 Q. Independent of your discussions</p> <p>21 with counsel.</p> <p>22 MR. SIDMAN: Object to the form.</p> <p>23 A. All of my understanding as it</p> <p>24 relates to this would have been based upon</p> <p>25 discussions with counsel.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. So -- just so I understand it, you</p> <p>3 don't have an understanding outside of your</p> <p>4 discussions with counsel of the meaning of "base</p> <p>5 case scenario" in the rehabilitation plan?</p> <p>6 MR. SIDMAN: Objection.</p> <p>7 A. My understanding of "base case" or</p> <p>8 "base scenario" are all, I'll use the term, based</p> <p>9 upon discussions with counsel.</p> <p>10 Q. Do you -- have you ever looked at</p> <p>11 models using the base case scenario? Looked at</p> <p>12 projection models based on the base case scenario?</p> <p>13 MR. SIDMAN: Objection to the form.</p> <p>14 A. I have never been involved in a</p> <p>15 prior rehabilitation plan. So the answer is no.</p> <p>16 Q. Did you ever receive a projection</p> <p>17 from an independent financial advisor retained by</p> <p>18 FGIC or the rehabilitator which illustrated</p> <p>19 projections based upon a base case scenario?</p> <p>20 MR. SIDMAN: Objection. I'm going</p> <p>21 to instruct the witness not to answer on the</p> <p>22 basis of work product.</p> <p>23 MR. GOODMAN: You're -- you're</p> <p>24 instructing him not to answer?</p> <p>25 MR. SIDMAN: Yes.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. GOODMAN: On what basis?</p> <p>3 MR. SIDMAN: Work product and</p> <p>4 attorney-client, if the communication --</p> <p>5 MR. GOODMAN: It's not work product</p> <p>6 if I ask him a question whether he'd ever seen</p> <p>7 a set of projections utilized -- showing a</p> <p>8 base case scenario. There are projections</p> <p>9 here that show --</p> <p>10 MR. SIDMAN: Well, then why don't</p> <p>11 you ask him about those?</p> <p>12 MR. GOODMAN: Okay.</p> <p>13 Q. Let's turn back to Exhibit 3. Do</p> <p>14 you understand -- if you turn to page 6 of Exhibit</p> <p>15 3 -- I'm sorry. Turn to Exhibit 1 of Exhibit 3.</p> <p>16 I apologize. Page 6.</p> <p>17 MR. SIDMAN: Exhibit 1 of Exhibit</p> <p>18 3.</p> <p>19 MR. GOODMAN: Yeah.</p> <p>20 MR. SIDMAN: Exhibit 1 of Dubel 3.</p> <p>21 MR. GOODMAN: I'm sorry?</p> <p>22 MR. SIDMAN: Exhibit 1 of Dubel 3.</p> <p>23 MR. GOODMAN: Of Dubel 3, yes.</p> <p>24 A. Just so everybody's aware, and so</p> <p>25 I'm clear on what page, can you refer to the --</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 just read the top of it, make sure we're all</p> <p>3 looking at the same page.</p> <p>4 Q. Updated Base Case Scenario</p> <p>5 Illustrated Financial Projections.</p> <p>6 Are you saying that you cannot</p> <p>7 understand these projections without the</p> <p>8 assistance of counsel? Is that your testimony</p> <p>9 here today?</p> <p>10 MR. SIDMAN: I think what he</p> <p>11 testified was to has been all of the</p> <p>12 understandings.</p> <p>13 MR. GOODMAN: That's my question.</p> <p>14 MR. SIDMAN: I think you have your</p> <p>15 answer, Counsel.</p> <p>16 You can go ahead and answer.</p> <p>17 A. Please repeat the question.</p> <p>18 Q. Are you saying that you cannot</p> <p>19 understand these projections without the</p> <p>20 assistance of counsel that are set forth on page</p> <p>21 6, Updated Base Case Scenario Illustrated</p> <p>22 Projected Financials?</p> <p>23 MR. SLACK: Objection to the form.</p> <p>24 A. I don't believe that that's what I</p> <p>25 previously said.</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Okay. What's your understanding of</p> <p>3 page 6 to Dubel Exhibit 3?</p> <p>4 MR. SIDMAN: Once again, to the</p> <p>5 extent that understanding is based on</p> <p>6 communications with counsel, I would instruct</p> <p>7 the witness not to answer.</p> <p>8 MR. GOODMAN: And I would ask that</p> <p>9 the -- you not coach the witness. He's had</p> <p>10 the instruction. He understands that you've</p> <p>11 raised an issue of privilege, and I'm asking</p> <p>12 him if he has an understanding of this.</p> <p>13 MR. SIDMAN: I'm not coaching the</p> <p>14 witness. I'm making an -- I'm making an</p> <p>15 objection and instruction, which is well</p> <p>16 within my rights under the rules.</p> <p>17 You can answer the question.</p> <p>18 A. Page 6 of Dubel Exhibit No. 3,</p> <p>19 which happens to be page 6's part of --</p> <p>20 Q. I'm talking about the Updated Base</p> <p>21 Case Scenario.</p> <p>22 A. I'm -- I'm making sure I'm</p> <p>23 referring to the right thing.</p> <p>24 Q. Okay.</p> <p>25 A. So let me restart it and make sure</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 I say it properly.</p> <p>3 Q. Okay.</p> <p>4 A. Dubel Exhibit 3, the Miller</p> <p>5 affidavit, has an exhibit, Exhibit 1, Updated</p> <p>6 Runoff Projections, which you're referring to</p> <p>7 as -- you're referring me to page 6?</p> <p>8 Q. Uh-huh.</p> <p>9 A. Page 6 is an updated base scenario</p> <p>10 illustrative projected financial statement, if you</p> <p>11 want to call it that.</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. What's your understanding of that?</p> <p>15 MR. SIDMAN: Same instruction.</p> <p>16 Go ahead.</p> <p>17 A. That it is an illustrative</p> <p>18 projected financial statement.</p> <p>19 Q. And is it your understanding that</p> <p>20 under these projections, policyholders in the base</p> <p>21 case can receive a present value of between 27 and</p> <p>22 30 cents on the dollar?</p> <p>23 MR. SIDMAN: Same instruction to</p> <p>24 the witness.</p> <p>25 A. What this particular page of this</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 document shows at the bottom is that there's an</p> <p>3 illustrative average policyholder recoveries base</p> <p>4 case that shows, based upon various different</p> <p>5 discount rates, that the recoveries could be 27 to</p> <p>6 30 percent. But in looking at that, you would</p> <p>7 have to incorporate all of the assumptions that</p> <p>8 are outlined earlier in the document because these</p> <p>9 are literally projections, as I stated before,</p> <p>10 that are -- these were 40 -- 40-year projections</p> <p>11 with various different risks involved.</p> <p>12 Q. Okay. Let's turn to Exhibit No. 1,</p> <p>13 Dubel Exhibit No. 1, page 2.</p> <p>14 A. Dubel 1, page 2?</p> <p>15 Q. Yes.</p> <p>16 A. Yes, sir.</p> <p>17 Q. The last sentence starting with,</p> <p>18 "The rehabilitator estimates that the initial CPP</p> <p>19 will be 15 percent" --</p> <p>20 A. I'm sorry. Where are you referring</p> <p>21 to?</p> <p>22 Q. I'm sorry. Last full paragraph,</p> <p>23 page 2.</p> <p>24 MR. SIDMAN: Right there.</p> <p>25 A. Yes. I'm sorry.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. The rehabilitator estimates that</p> <p>3 the initial CPP will be 15 percent, but as set</p> <p>4 forth in the runoff projections attached hereto as</p> <p>5 Exhibit C, that the ultimate recovery to</p> <p>6 policyholders will be approximately 24 to 25</p> <p>7 percent of permitted policy claims on a net</p> <p>8 present value basis using a 20 -- a discount rate</p> <p>9 of 20 and 10 percent.</p> <p>10 Do you see that?</p> <p>11 MR. SLACK: You didn't read it</p> <p>12 right.</p> <p>13 MR. GOODMAN: Okay. He can read it</p> <p>14 himself.</p> <p>15 A. Did you intend to leave out the</p> <p>16 word "average," or is that just a --</p> <p>17 Q. No.</p> <p>18 A. Okay.</p> <p>19 Q. We looked at this paragraph</p> <p>20 earlier.</p> <p>21 A. I do see it, yes.</p> <p>22 Q. We looked at this paragraph</p> <p>23 earlier, and you said you agreed with this</p> <p>24 paragraph, the statement in this paragraph, as I</p> <p>25 recall.</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: I think that was not</p> <p>3 his testimony, but you can clarify. You can</p> <p>4 answer.</p> <p>5 A. Is there a question? I'm not</p> <p>6 sure --</p> <p>7 Q. Do you agree -- do you agree with</p> <p>8 what's set forth, the summary set forth in this</p> <p>9 paragraph?</p> <p>10 A. As I answered before, I agree with</p> <p>11 the concepts. Obviously, it has -- it has changed</p> <p>12 since. There have been an additional set of</p> <p>13 projections, but the general concepts I agree with</p> <p>14 recognizing that these are, again, what the -- the</p> <p>15 numbers that are incorporated in the runoff</p> <p>16 projections that are attached to this document as</p> <p>17 Exhibit C are a set of -- I think at the time it</p> <p>18 would have been a 41-year set of projections with</p> <p>19 a tremendous amount of risk, so that that number</p> <p>20 could be higher or could be a lot lower.</p> <p>21 Q. But here it says that the</p> <p>22 rehabilitator estimates that there will be a 15</p> <p>23 percent, but as set forth in the runoff</p> <p>24 projections -- and then he goes on, right, to say</p> <p>25 it will be approximately 24 to 25 percent of</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 permitted policy claims. Right?</p> <p>3 A. I think it says that the</p> <p>4 rehabilitator is estimating that, yes.</p> <p>5 Q. Yeah, yeah. And you just mentioned</p> <p>6 that the 24 to 25 percent has been updated.</p> <p>7 Correct?</p> <p>8 MR. SIDMAN: Object to the form.</p> <p>9 Q. And it was updated -- you pointed</p> <p>10 to a document. What document were you pointing to</p> <p>11 with respect to the update?</p> <p>12 MR. SIDMAN: Object to the form.</p> <p>13 A. I don't recall pointing to a</p> <p>14 document.</p> <p>15 Q. Okay. I thought you were referring</p> <p>16 to a document.</p> <p>17 Is there a document that updates</p> <p>18 this information?</p> <p>19 MR. SIDMAN: Object to the form.</p> <p>20 A. There is.</p> <p>21 Q. And what document is that?</p> <p>22 A. It would be Dubel Exhibit 3.</p> <p>23 Q. And how does it update that</p> <p>24 information? Which numbers in this paragraph have</p> <p>25 changed?</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Object to the form.</p> <p>3 A. I'm sorry. Which numbers have</p> <p>4 changed?</p> <p>5 Q. Which numbers in this last sentence</p> <p>6 have changed?</p> <p>7 A. Without reviewing Exhibit 3, I</p> <p>8 don't recall whether or not -- I believe it's in</p> <p>9 here that the 15 percent is now 17 and a quarter</p> <p>10 percent.</p> <p>11 Q. Okay.</p> <p>12 A. And the reference to the average</p> <p>13 ultimate recovery to policyholders, which had</p> <p>14 previously -- would be approximately 24 to 25</p> <p>15 percent of each permitted policy claim on a net</p> <p>16 present value basis using a discount rate of 20 to</p> <p>17 -- 20 and 10 percent, that those numbers would</p> <p>18 change to 27 to 30 percent. But I would have to</p> <p>19 go back and see, you know, make sure it's exactly</p> <p>20 right, but that's what I believe is the change.</p> <p>21 Q. Okay. Now, it's the -- you're the</p> <p>22 CEO of FGIC currently. Is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. You're also on the board of FGIC.</p> <p>25 Correct?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection.</p> <p>3 A. No.</p> <p>4 Q. I'm sorry. That's not correct?</p> <p>5 A. No, that is not correct.</p> <p>6 Q. Okay. Okay. Independent of</p> <p>7 counsel, you don't have any understanding, am I</p> <p>8 correct, of the definition of "base case scenario"</p> <p>9 that you just reviewed in the plan of</p> <p>10 reorganization?</p> <p>11 MR. SIDMAN: Object to the form.</p> <p>12 A. The definition in the plan of</p> <p>13 reorganization was developed by counsel. When I</p> <p>14 read it, in order to understand it, I asked</p> <p>15 counsel questions. And so my understanding is</p> <p>16 based upon -- my understanding of that definition</p> <p>17 is based upon discussions with counsel.</p> <p>18 Q. You may have an understanding,</p> <p>19 okay, of the definition of "base case scenario"</p> <p>20 from counsel, I understand that, but do you employ</p> <p>21 in your position as CEO of FGIC this definition as</p> <p>22 part of your job responsibilities?</p> <p>23 MR. SIDMAN: Object to the form.</p> <p>24 You can answer.</p> <p>25 A. Say -- I'm sorry. Could you just</p>



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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 repeat it again, your question?</p> <p>3 Q. Said you have -- you may have an</p> <p>4 understanding of the definition of "base case</p> <p>5 scenario" from counsel, I understand that. But do</p> <p>6 you employ in your position as the CEO of FGIC</p> <p>7 this definition as part of your job</p> <p>8 responsibilities?</p> <p>9 MR. SIDMAN: Same objection.</p> <p>10 A. When you say "employ," do we -- do</p> <p>11 we utilize that definition? Yes, in connection</p> <p>12 with the Plan of Rehabilitation.</p> <p>13 Q. Okay. And you utilize it in</p> <p>14 connection with the plan of reorganization.</p> <p>15 That's your testimony. Correct?</p> <p>16 A. No.</p> <p>17 MR. SIDMAN: No. Objection.</p> <p>18 Q. Okay. What is your testimony?</p> <p>19 A. I think I just said. The -- the --</p> <p>20 we utilize it in connection with the Plan of</p> <p>21 Rehabilitation.</p> <p>22 Q. Rehabilitation, I'm sorry. You got</p> <p>23 me. Okay. All right.</p> <p>24 A. I'm sorry. I wasn't trying to get</p> <p>25 you. I was trying to make sure I answered the</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 question properly.</p> <p>3 Q. No prob. Just kidding. I've made</p> <p>4 that mistake constantly throughout here, and I</p> <p>5 apologize.</p> <p>6 A. It's just that we have a plan of</p> <p>7 reorganization in ResCap. I want to make sure I'm</p> <p>8 answering the correct question.</p> <p>9 Q. So as part of your</p> <p>10 responsibilities, do you have an understanding of</p> <p>11 the term "base case scenario"?</p> <p>12 MR. SIDMAN: Objection. Same</p> <p>13 instruction. If that understanding I think --</p> <p>14 if that understanding is based on consultation</p> <p>15 or communications with counsel, I would</p> <p>16 instruct you not to answer -- or -- instruct</p> <p>17 you not to answer that question.</p> <p>18 A. I do.</p> <p>19 Q. Okay. And what's your</p> <p>20 understanding?</p> <p>21 A. As I stated before, my</p> <p>22 understanding is based upon discussions with</p> <p>23 counsel. I did not draft the language in</p> <p>24 the definition. I did not draft the definition.</p> <p>25 When I read it, I asked counsel what it meant, and</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 so my understanding of the definition is based</p> <p>3 upon discussions with counsel.</p> <p>4 Q. So, in other words, in order for a</p> <p>5 layman to understand this Disclosure Statement, do</p> <p>6 they need to get advice of counsel on the</p> <p>7 definition of "base case scenario"?</p> <p>8 MR. SIDMAN: Object to the form.</p> <p>9 Answer if you can.</p> <p>10 A. I would have no idea what someone</p> <p>11 reading it -- I'm answering that my understanding</p> <p>12 is based upon discussions with counsel. I don't</p> <p>13 know what other parties would understand or would</p> <p>14 not understand. I don't -- there are a lot of</p> <p>15 laymen who are lawyers by training. They might</p> <p>16 have a different understanding. There are other</p> <p>17 people who do.</p> <p>18 In this case, I got my</p> <p>19 understanding of this definition after discussing</p> <p>20 it with counsel.</p> <p>21 Q. And without the assistance of</p> <p>22 counsel, you would not understand how to employ</p> <p>23 the term "base case scenario"?</p> <p>24 MR. SIDMAN: Objection. Asked and</p> <p>25 answered.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I think you're asking me a</p> <p>3 hypothetical question, which I can't answer,</p> <p>4 because my understanding of the definition is</p> <p>5 based upon reading a document that was drafted by</p> <p>6 counsel and asking counsel for the interpretation</p> <p>7 of that definition.</p> <p>8 Q. Did you ever communicate or discuss</p> <p>9 the base case scenario with the Steering</p> <p>10 Committee?</p> <p>11 MR. SIDMAN: Objection to form.</p> <p>12 And, once again, mark this portion of the</p> <p>13 transcript confidential.</p> <p>14 A. I don't recall.</p> <p>15 Q. You don't recall ever having</p> <p>16 discussions with the Steering Committee on the</p> <p>17 base case scenario?</p> <p>18 MR. SIDMAN: Object to the form.</p> <p>19 Asked and answered.</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you have a discussion with any</p> <p>22 of the policyholders regarding the base case</p> <p>23 scenario?</p> <p>24 MR. SIDMAN: Object to the form.</p> <p>25 A. I don't recall having any.</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Let's look at Exhibit 3 for a</p> <p>3 moment, paragraph 8 -- paragraph 28.</p> <p>4 A. Are you referring to the previously</p> <p>5 discussed paragraph on page 9?</p> <p>6 Q. Yes, please.</p> <p>7 A. Thank you.</p> <p>8 Q. Do you see where it states, and you</p> <p>9 can read it for yourself, in the last two lines,</p> <p>10 "Compared to approximately 27 through 30 percent</p> <p>11 of permitted policy claims under the plan at a 10</p> <p>12 through 20 percent illustrative discount rate."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you agree with the Miller</p> <p>16 affidavit's use of a 10 to 20 percent illustrative</p> <p>17 discount rate?</p> <p>18 MR. SIDMAN: Object to the form.</p> <p>19 A. I have no reason not to agree --</p> <p>20 not to agree with that.</p> <p>21 Q. Do you think that the illustrative</p> <p>22 discount rate should be higher or should be lower?</p> <p>23 MR. SIDMAN: Object to the form.</p> <p>24 A. I have no reason to disagree with</p> <p>25 the use of that range.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Did you ever discuss with anyone</p> <p>3 other than counsel whether the illustrative</p> <p>4 discount rate should be something other than the</p> <p>5 10 to 20 percent that was utilized by Miller in</p> <p>6 his affidavit?</p> <p>7 MR. SIDMAN: Objection to form.</p> <p>8 A. No.</p> <p>9 (Dubel Exhibit 4 marked for</p> <p>10 identification.)</p> <p>11 Q. Mr. Dubel, you have what's been</p> <p>12 marked as Dubel Exhibit 4 in front of you. Do you</p> <p>13 see that?</p> <p>14 A. I do.</p> <p>15 Q. What is Dubel Exhibit 4?</p> <p>16 A. It appears to be an exhibit,</p> <p>17 Exhibit No. 2. It's referred to as -- I don't</p> <p>18 recall exactly what document it's attached to, but</p> <p>19 it is a Settlement Agreement by and among</p> <p>20 Residential Capital, LLC, and its direct and</p> <p>21 indirect subsidiaries listed on an exhibit to this</p> <p>22 Settlement Agreement. Financial Guaranty</p> <p>23 Insurance Company, the Bank of New York, the Bank</p> <p>24 of New York Mellon Trust Company, Law Debenture,</p> <p>25 U.S. Bank National Association and Wells Fargo</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Bank, and I might have missed a couple of NAs and</p> <p>3 other defining portions of the document.</p> <p>4 Q. And is this Settlement Agreement</p> <p>5 signed?</p> <p>6 A. Yes.</p> <p>7 Q. And do you believe this is the</p> <p>8 Settlement Agreement that was entered into by the</p> <p>9 parties that you just mentioned on the record?</p> <p>10 A. Well, you're -- you're handing me a</p> <p>11 document that I've never seen -- you know, I've</p> <p>12 never seen this physical document, but if it's</p> <p>13 the -- if you're referring to the Settlement</p> <p>14 Agreement that was, you know, signed by all these</p> <p>15 parties and it's the exact replica of all of it,</p> <p>16 then I would believe it is the -- a copy of it,</p> <p>17 but I, obviously, have not read the whole thing to</p> <p>18 determine if there was a page missing or anything.</p> <p>19 Q. Understood. Do you mind if I refer</p> <p>20 to this as the ResCap settlement?</p> <p>21 A. Sure.</p> <p>22 Q. Do you know whether the ResCap</p> <p>23 settlement provides for the commutation of</p> <p>24 policies that were issued to RMBS Trust with</p> <p>25 ResCap affiliates?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection to the form.</p> <p>3 You can answer.</p> <p>4 A. I'm not sure what your definition</p> <p>5 of commutation is, so I don't feel comfortable</p> <p>6 answering the question.</p> <p>7 Q. Does it provide for the termination</p> <p>8 of those policies?</p> <p>9 A. No, it does not.</p> <p>10 Q. What does it provide for with</p> <p>11 respect to the policies that were issued to the</p> <p>12 RMBS Trust involving ResCap affiliates?</p> <p>13 A. Well, I can't -- you're asking a</p> <p>14 question that's encompassed in, you know, 20 --</p> <p>15 16, 17 pages of -- of a legal document. It's --</p> <p>16 Q. I'm asking for your understanding,</p> <p>17 though?</p> <p>18 A. It's a settlement of the -- of the</p> <p>19 claims that have yet to be paid and future claims</p> <p>20 and it also incorporates other relief in the</p> <p>21 docu- -- in the Settlement Agreement.</p> <p>22 Q. And that's -- that's correct. And</p> <p>23 what does the settlement provide for with respect</p> <p>24 to the RMBS Trust with ResCap -- with ResCap</p> <p>25 affiliates?</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection.</p> <p>3 Q. What does it provide for with</p> <p>4 respect to the treatment of those policies?</p> <p>5 MR. SIDMAN: Object to the form.</p> <p>6 A. Well, it provides for -- and,</p> <p>7 again, this is all laid out in the document, but</p> <p>8 it provides for FGIC to pay \$253.3 million to</p> <p>9 those trusts to forego the receipt of future</p> <p>10 premium payments and to give up certain other</p> <p>11 rights that FGIC would have as it relates to those</p> <p>12 trusts.</p> <p>13 Q. And do you know what the current</p> <p>14 claims are that the trust have against their FGIC</p> <p>15 policies, what the current amount of those claims</p> <p>16 are?</p> <p>17 MR. SIDMAN: Objection to the form,</p> <p>18 and I'll instruct the witness that it's a</p> <p>19 yes-or-no question at this point. If that --</p> <p>20 I don't want you to -- I don't want you to</p> <p>21 provide any substance of any communications</p> <p>22 that was provided by counsel to you.</p> <p>23 A. There is a reference in here that</p> <p>24 states that FGIC has received approximately \$789</p> <p>25 million of claims of -- under the policies.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. And where is it that you're</p> <p>3 referring to?</p> <p>4 A. I guess it's page 1 at the bottom</p> <p>5 in the last whereas. But it says approximately,</p> <p>6 and those claims have not yet been reconciled. So</p> <p>7 for FGIC, there is a process laid out in the plan</p> <p>8 in which FGIC would have to reconcile those</p> <p>9 claims. So it's an approximate number because</p> <p>10 that number could change based upon the</p> <p>11 resubmission of the claims and the reconciliation</p> <p>12 that FGIC has to go through of those claims.</p> <p>13 That's why it's, you know, approximately.</p> <p>14 Q. So the amount of those claims could</p> <p>15 be higher? Is that a possibility?</p> <p>16 MR. SIDMAN: Objection. You can</p> <p>17 answer.</p> <p>18 A. It could be lower. It could be</p> <p>19 higher.</p> <p>20 Q. And when will FGIC be able to</p> <p>21 determine the exact amounts of those claims?</p> <p>22 MR. SIDMAN: Objection.</p> <p>23 You can answer.</p> <p>24 A. If this settlement agreement goes</p> <p>25 effective and FGIC makes the payments and all of</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 the other conditions to this are satisfied, then</p> <p>3 it will not be the full-blown reconciliation</p> <p>4 process that is incorporated in the FGIC</p> <p>5 rehabilitation plan.</p> <p>6 Q. And how about future claims? Has</p> <p>7 FGIC estimated the future claims under those</p> <p>8 policies?</p> <p>9 A. We have.</p> <p>10 Q. And do you know what the amount of</p> <p>11 those future claims are?</p> <p>12 MR. SIDMAN: Objection. If you</p> <p>13 received that information as a result of</p> <p>14 communications from counsel, I would instruct</p> <p>15 the witness not to answer.</p> <p>16 MR. GOODMAN: That's a ridiculous</p> <p>17 -- that's a ridiculous question. That's a</p> <p>18 ridic- -- that's a ridiculous objection. The</p> <p>19 number is out there as part of -- and has been</p> <p>20 disclosed as part of the settlement. Okay?</p> <p>21 So he knows the number.</p> <p>22 MR. SLACK: It begs the question</p> <p>23 why you're asking if you know -- if you know</p> <p>24 the number. If --</p> <p>25 MR. GOODMAN: Because I want to --</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 I want to know the witness's understanding.</p> <p>3 He's the one testifying, not me.</p> <p>4 THE WITNESS: Can I answer?</p> <p>5 MR. SIDMAN: Oh, yeah.</p> <p>6 A. I'm sorry. Just wanted to make</p> <p>7 sure I could answer.</p> <p>8 Over \$400 million is our -- is our</p> <p>9 estimate, but that is a complete estimate and is</p> <p>10 subject to many variables in which it could</p> <p>11 change.</p> <p>12 Q. It could be higher; it could be</p> <p>13 lower?</p> <p>14 A. It could be higher, and it could be</p> <p>15 significantly lower.</p> <p>16 (Discussion off the record.)</p> <p>17 MR. GOODMAN: Can we take a quick</p> <p>18 break?</p> <p>19 THE VIDEOGRAPHER: Going off the</p> <p>20 record. The time is 5:05 p.m.</p> <p>21 (Recess taken.)</p> <p>22 THE VIDEOGRAPHER: We're going on</p> <p>23 the record. The time is 5:16 p.m.</p> <p>24 Q. Now, Mr. Dubel, we were talking</p> <p>25 about the ResCap settlement before the break.</p>

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Am I correct that at least with respect to the RMBS Trust, the guts of the settlement is FGIC is going to pay them \$253 million to satisfy claims that have been received of about \$789 million of unpaid claims and an additional \$400 million of estimated future claims. Is that correct?

MR. SIDMAN: Objection to form and to the use of the word "them."

A. I think, as I stated before, FGIC will be -- would pay \$253.3 million, plus forego future premiums, plus give up certain rights that it currently has related to those trusts, and in exchange it will have settled up the existing claims that remain that is received plus any future claims.

Q. And have you had the occasion to estimate the average recovery for these RMBS Trusts as a result of these settlements?

MR. SIDMAN: Objection to form.

Q. From FGIC?

A. I'm not sure -- when you say "average recovery" --

Q. Like, I mean, taking this into

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account, the claims that are being released, the premiums that -- not being paid, the cash they're receiving. How much are the trusts receiving on the dollar? Have you had occasion to calculate that?

A. Well, the trusts are receiving \$253.3 million, plus they're getting the value of the future premiums, plus they're getting the value of all of the rights that FGIC is foregoing.

Q. And do you agree that their recovery is about 21 cents on the dollar?

MR. SIDMAN: Object to the form.

A. I have no reason to -- to believe that that's the number because it is all premised on both the finalization of the claims that are received and the future claims that come in and the value to the trustees as policyholders of receiving back the rights that FGIC has.

Q. So are you saying it could be higher or it could be lower than 21 cents?

MR. SIDMAN: Object to the form.

A. I'm -- I'm not saying it is or isn't 21 cents. So to say it's higher or lower, I can't comment on that.

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Q. Have you ever ball parked it?

MR. SIDMAN: Objection.

A. Not with all the factors that I've discussed.

Q. Okay. So you haven't done that.

And once this settlement with the RMBS Trust is done, they have no more claim against FGIC -- the FGIC policies. Is that correct? Is that the result of the settlement?

MR. SIDMAN: Objection.

A. The document speaks for itself, and it's a legal document. So I'm not going to --

Q. What's your under- -- what's -- but what's your understanding of it? You were chief negotiator. What's your understanding of it?

MR. SIDMAN: Object to the form.

A. My understanding is that all existing, received and unpaid claims and any future claims that could be put to FGIC under the policies would be settled, and FGIC would have no liabilities under those or any further obligations under those.

Q. Okay. And so the ResCap RMBS Trusts are settled. Right?

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Now, isn't it correct that with respect to the non-ResCap RMBS Trust policies, don't they stand to get a greater return than the base case scenario set forth in the Miller affidavit as a result of the satisfaction of that liability?

MR. SIDMAN: Object to the form.

You can answer, if you can.

A. What the other policies that FGIC has that would be in place at the time of the effective date will get whatever they would be entitled to under the FGIC rehabilitation plan over the next 40 years.

Q. And have you had occasion -- I'm sorry. I didn't realize you weren't finished with your answer. Please finish.

A. And as -- as I've stated before, it could be greater or a lot less than what's in the Miller affidavit.

Q. Okay. Have you had occasion to value how much more they will receive as a result of the ResCap settlement on their policy claims?

MR. SIDMAN: Object to the form and the use of "they."

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I'm sorry. Repeat the question.</p> <p>3 Q. Have you had occasion to value how</p> <p>4 much more the non-ResCap Trusts will receive as a</p> <p>5 result of the ResCap settlement?</p> <p>6 MR. SIDMAN: Object to the form.</p> <p>7 Misstates his testimony.</p> <p>8 MR. GOODMAN: I didn't ask him</p> <p>9 about his testimony. I asked if he had</p> <p>10 occasion.</p> <p>11 A. I've looked at that, yes.</p> <p>12 Q. And you've looked at it, and did</p> <p>13 you come up with a number?</p> <p>14 MR. SLACK: Let me -- let me object</p> <p>15 to only -- only to the extent that whatever</p> <p>16 analysis he's thinking about was done in</p> <p>17 furtherance of either the -- the settlement</p> <p>18 or -- or the plan, then I would instruct you</p> <p>19 not to answer on the basis of work -- work</p> <p>20 product privilege and attorney-client and the</p> <p>21 mediation privilege.</p> <p>22 MR. SIDMAN: Same objection. Same</p> <p>23 instruction.</p> <p>24 Q. Are you following your counsel's</p> <p>25 instruction?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I'm following my counsel's</p> <p>3 instruction.</p> <p>4 Q. So you -- you will not answer that</p> <p>5 question?</p> <p>6 A. I'm following my counsel's</p> <p>7 instruction.</p> <p>8 Q. And just to be clear --</p> <p>9 MR. SIDMAN: I am instructing the</p> <p>10 witness not to answer your question.</p> <p>11 Q. And is it your testimony that that</p> <p>12 calculation was done as part of the mediation?</p> <p>13 MR. SIDMAN: You can answer that</p> <p>14 question.</p> <p>15 A. Yes.</p> <p>16 Q. In terms of the \$253 million</p> <p>17 payment, just so I understand, is it your</p> <p>18 understanding that that's an actual payment of</p> <p>19 \$253 million to the trust? Could it be more or</p> <p>20 could it be less? That's my question.</p> <p>21 MR. SIDMAN: Objection to form.</p> <p>22 A. It would be an actual cash payment</p> <p>23 to all of the trusts.</p> <p>24 Q. Of 253 million.</p> <p>25 A. Of \$253.3 million.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 And as I said earlier, there would</p> <p>3 be a foregoing of insurance, you know, premiums</p> <p>4 and the give up of certain other rights.</p> <p>5 Q. Okay. Does -- under the</p> <p>6 settlement, does FGIC have the right to recover</p> <p>7 any of the \$253 million dollars under the</p> <p>8 waterfall's policies that underlie the trusts?</p> <p>9 MR. SIDMAN: Object to the form.</p> <p>10 Q. Do you understand the question?</p> <p>11 A. I'm not sure I do.</p> <p>12 Q. FGIC pays the trust \$253 million.</p> <p>13 A. Right.</p> <p>14 Q. The trusts pay off its claim</p> <p>15 pursuant to the trust indenture agreement and the</p> <p>16 waterfall provisions. Are you with me?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Does FGIC have a right to collect</p> <p>19 under the waterfall provisions any of the \$253</p> <p>20 million that its paid over to the trust? Is that</p> <p>21 your understanding?</p> <p>22 MR. SIDMAN: Object to the form.</p> <p>23 If your understanding is based on</p> <p>24 communications with counsel, then I would</p> <p>25 instruct you not to answer the question. If</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 it's not based on communications with counsel,</p> <p>3 then go ahead and answer the question.</p> <p>4 A. As I stated earlier, FGIC is paying</p> <p>5 out \$253.3 million, foregoing certain premiums and</p> <p>6 certain other rights, and I think what you're</p> <p>7 referring to is what I've referred to as some of</p> <p>8 those other rights. So any rights that it might</p> <p>9 get -- that it might have to receive</p> <p>10 reimbursements or anything else, FGIC is</p> <p>11 foregoing, as I understand it.</p> <p>12 MR. GOODMAN: Okay. I'm going to</p> <p>13 turn this over to counsel for Stonehill and</p> <p>14 Monarch. Just so I'm clear on the record, I</p> <p>15 reserve the right to recall this witness</p> <p>16 particularly with respect to directions given</p> <p>17 my counsel, which we don't agree, with respect</p> <p>18 to the work product privilege, the</p> <p>19 attorney-client privilege and the mediation</p> <p>20 privilege that have been asserted on the</p> <p>21 record.</p> <p>22 MR. SHEEREN: I propose you change</p> <p>23 the tape. Then we go to the end.</p> <p>24 THE VIDEOGRAPHER: Okay. This will</p> <p>25 end Videotape No. 3 of the deposition of John</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Dubel. We're going off the record at</p> <p>3 approximately 5:26 p.m., July 10th, 2013.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: We are now on</p> <p>6 the record beginning approximately 5:29 p.m.,</p> <p>7 July 10th, 2013. This will begin videotape</p> <p>8 No. 4 of the deposition of John Dubel.</p> <p>9 EXAMINATION BY</p> <p>10 MR. BAIO:</p> <p>11 Q. Mr. Dubel, my name is Joe Baio. I</p> <p>12 represent the parties whom I identified at the</p> <p>13 beginning of this proceeding, and I'll have some</p> <p>14 questions for you.</p> <p>15 A. Good afternoon.</p> <p>16 Q. Good afternoon.</p> <p>17 You have had before you Exhibit 4</p> <p>18 which is a Settlement Agreement, which is before,</p> <p>19 as I understand it, both the bankruptcy court and</p> <p>20 the New York State Court. Is that correct?</p> <p>21 A. Yes, I've had the exhibit before</p> <p>22 me. Is that -- that the question?</p> <p>23 Q. Yes, that's the question.</p> <p>24 A. Yes.</p> <p>25 Q. And I think it is your testimony</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 that you participated significantly in discussions</p> <p>3 leading to the ultimate execution of that</p> <p>4 agreement. Is that correct?</p> <p>5 MR. SIDMAN: Object to the form.</p> <p>6 You can answer.</p> <p>7 A. I was involved in the -- in the</p> <p>8 negotiation and the development of this.</p> <p>9 Q. All right. And -- and you referred</p> <p>10 to securing some input from various constituencies</p> <p>11 as early as January of 2015. Is that correct?</p> <p>12 MR. SIDMAN: Objection. I think it</p> <p>13 misstates his testimony. You said 2015. I</p> <p>14 think that's --</p> <p>15 MR. BAIO: I did?</p> <p>16 MR. SIDMAN: Yes.</p> <p>17 MR. BAIO: 2013.</p> <p>18 MR. SIDMAN: I still think that's</p> <p>19 not exactly right, but you an answer.</p> <p>20 A. That's not what I testified before.</p> <p>21 Q. All right. What -- what were you</p> <p>22 engaging in in January of 2013 about which you</p> <p>23 testified earlier this -- this afternoon?</p> <p>24 A. Discussions commenced that</p> <p>25 ultimately resulted in the execution of this</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 doc- -- this Settlement Agreement document.</p> <p>3 Q. Okay. And the discussions</p> <p>4 commenced in January of 2013?</p> <p>5 A. Discussions that ultimately</p> <p>6 resulted in this, yes, January of 2013.</p> <p>7 Q. And with whom did you have</p> <p>8 discussions at the outset about the matters that</p> <p>9 ultimately led to this Settlement Agreement?</p> <p>10 A. There were a variety of parties.</p> <p>11 It would have been folks from investor group, or I</p> <p>12 don't know what the official term is, but people</p> <p>13 represented by Kathy Patrick's group and other</p> <p>14 parties that were involved in the mediation</p> <p>15 process and what had been represented to me was</p> <p>16 that Kathy's group was having discussions with the</p> <p>17 various different trustees.</p> <p>18 Q. And in January of 2013, did you</p> <p>19 have an understanding as to who those discussions</p> <p>20 were with?</p> <p>21 MR. SIDMAN: Object to the form.</p> <p>22 A. I don't know whether -- as I said,</p> <p>23 it was the latter part of January, mid to latter</p> <p>24 part of January. So I don't know exactly when I</p> <p>25 got the understanding of who they were with, other</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 than it would have been later in February that --</p> <p>3 that I would have had that clear understanding.</p> <p>4 Q. Okay. So later in February you had</p> <p>5 an understanding that Ms. Patrick was</p> <p>6 communicating with other investors about the</p> <p>7 subjects that you were discussing with her. Is</p> <p>8 that correct?</p> <p>9 MR. SIDMAN: Object to the form.</p> <p>10 You can answer.</p> <p>11 A. Ms. -- well, Ms. Patrick</p> <p>12 represented, or maybe she doesn't -- I'm not sure</p> <p>13 of her official role, technical role, but whatever</p> <p>14 group that she represented, but also that there</p> <p>15 were discussions taking place with the trustees.</p> <p>16 Q. Okay. You understood that she was</p> <p>17 having discussions with the trustees in February</p> <p>18 of 2013?</p> <p>19 MR. SIDMAN: Object to the form.</p> <p>20 A. I believe that's the time frame</p> <p>21 that the initial discussions with the trustees,</p> <p>22 but I don't -- wasn't part of those discussions.</p> <p>23 So I may be incorrect or I may have misunderstood</p> <p>24 what was originally said to me at that time.</p> <p>25 Q. All right. Well, do you have an</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 understanding as to when the trustees became</p> <p>3 involved in the discussions about which you are</p> <p>4 testifying?</p> <p>5 A. I know that in March of 2013 that</p> <p>6 representatives of the trustees were communicating</p> <p>7 with me and with my counsel as it related to the</p> <p>8 ultimate -- the issues that ultimately came down</p> <p>9 into the Settlement Agreement, and this was,</p> <p>10 again, all part of the mediation process.</p> <p>11 Q. Okay. And -- and when you refer to</p> <p>12 March of 2013, who were the representatives of the</p> <p>13 trustees that you were communicating with at that</p> <p>14 time about what ultimately became the settlement?</p> <p>15 A. It would have been -- my</p> <p>16 communications would have been with -- with my</p> <p>17 counsel and with counsel for the Bank of New York.</p> <p>18 Q. Was it just Bank of New York,</p> <p>19 counsel for Bank of New York, or was it also</p> <p>20 counsel for other of the trustees? And I'm</p> <p>21 referring to March of 2013.</p> <p>22 MR. SIDMAN: Objection to form.</p> <p>23 You can answer.</p> <p>24 A. My discussions were with counsel</p> <p>25 for Bank of New York as it related to this</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 particular issue, but I don't know if they were --</p> <p>3 you know, if they were communicating amongst</p> <p>4 themselves or not.</p> <p>5 Q. Okay. But you do know that some</p> <p>6 representative of the Bank of New York counsel did</p> <p>7 participate in discussions with you sometime in</p> <p>8 March about the subject?</p> <p>9 MR. SIDMAN: Object to the form.</p> <p>10 A. That's correct.</p> <p>11 Q. Prior to that time, in March of</p> <p>12 2013, had you had any communications with any of</p> <p>13 the trustees or their counsel on any of the</p> <p>14 subjects that eventually became embodied in the</p> <p>15 settlement agreement?</p> <p>16 A. No -- prior to -- I'm sorry, prior</p> <p>17 to March?</p> <p>18 Q. Well, you've identified this March</p> <p>19 2013 time when I believe you recall that an</p> <p>20 attorney for the Bank of New York became involved</p> <p>21 in these discussions.</p> <p>22 What I'm trying to find out is if</p> <p>23 there were any discussions that you were involved</p> <p>24 in prior to that time with any of the other</p> <p>25 trustees or their representatives.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection to the form.</p> <p>3 A. I happen to serve on the creditors</p> <p>4 committee of ResCap, the unofficial -- the</p> <p>5 official unsecured creditors committee of ResCap</p> <p>6 and all of its debtors. We had frequent meetings.</p> <p>7 We had frequent meetings as it relates to the</p> <p>8 mediation process. I don't recall -- I mean, I</p> <p>9 spoke to them all the time. I don't recall</p> <p>10 specifically anything prior to March with</p> <p>11 individual trustees or their representatives other</p> <p>12 than the Bank of New York.</p> <p>13 Q. Okay.</p> <p>14 A. But I may have. I just don't</p> <p>15 recall since we had constant meetings.</p> <p>16 Q. Would you have documents that would</p> <p>17 reflect communications with others beyond Bank of</p> <p>18 New York in connection with this process?</p> <p>19 MR. SIDMAN: Objection to the form.</p> <p>20 You can answer with respect to</p> <p>21 whether or not there are documents that exist,</p> <p>22 but not to the -- not with respect to the</p> <p>23 substance of those documents.</p> <p>24 A. And, again, prior to March?</p> <p>25 Q. Yes.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I don't recall. There were a</p> <p>3 tremendous number of communications by committee</p> <p>4 counsel, and I don't recall if, you know, those</p> <p>5 would have -- but I don't recall myself having</p> <p>6 any, you know, documents.</p> <p>7 Q. All right.</p> <p>8 A. That -- you know, that I would have</p> <p>9 originated, you know -- if creditors committee</p> <p>10 counsel did, I -- you know, I don't recall them</p> <p>11 all.</p> <p>12 Q. How about what you received as</p> <p>13 well? And there's no mystery here. I'm trying to</p> <p>14 find out when the various trustees were involved</p> <p>15 in these discussions. They have certain</p> <p>16 declarations where they've identified dates, and I</p> <p>17 just want your recollection as to when they became</p> <p>18 involved, to the extent you remember?</p> <p>19 MR. SIDMAN: Object to the form.</p> <p>20 Q. You said Bank of New York in</p> <p>21 2000 -- I'm sorry, in March of 2013.</p> <p>22 Who were the other trustee</p> <p>23 representatives, and when do you recall meeting</p> <p>24 with them for the first time to discuss the</p> <p>25 settlement?</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Objection to the form.</p> <p>3 You can answer.</p> <p>4 A. Again, I have no idea when the</p> <p>5 other trustees had their communications. I do</p> <p>6 know that I met with the Bank of New York. There</p> <p>7 are multiple trustees. There was one individual</p> <p>8 counsel from Bank of New York who was, I'll call</p> <p>9 it, leading the charge. I don't know whether he</p> <p>10 had official capacity to do that, but he was</p> <p>11 acting as a spokesman or -- or that's how I viewed</p> <p>12 it. And I was acting on -- you know,</p> <p>13 communicating with all the rest of the trustees,</p> <p>14 and that was the person from -- counsel for Bank</p> <p>15 of New York.</p> <p>16 Q. And who was that?</p> <p>17 A. It was Glen Segal from my -- Seward</p> <p>18 &amp; Kissel.</p> <p>19 Q. And did you in March of 2000 --</p> <p>20 A. I'm sorry. Dechert. Yeah, I'm</p> <p>21 sorry. Sorry.</p> <p>22 Q. And did you have written</p> <p>23 communications back and forth with him?</p> <p>24 A. At various times, yes.</p> <p>25 Q. And did you initiate the contact</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 with him, or did he initiate the contact with you</p> <p>3 on the subject of the Settlement Agreement or what</p> <p>4 eventually became the Settlement Agreement?</p> <p>5 MR. SIDMAN: Objection to the form.</p> <p>6 A. I did not initiate the contact.</p> <p>7 Q. Did he initiate the contact with</p> <p>8 you?</p> <p>9 A. I don't know whether he initiated</p> <p>10 it or somebody else, i.e., the Kathy Patrick, you</p> <p>11 know, Group, I'll call it, had initiated that.</p> <p>12 Q. When did the subject of commutation</p> <p>13 come up in connection with the discussions that</p> <p>14 you were involved in that eventually led to the</p> <p>15 Settlement Agreement?</p> <p>16 MR. SIDMAN: You are asking him the</p> <p>17 date. Right? You're not asking him for the</p> <p>18 substantive communications?</p> <p>19 MR. BAIO: No sub- -- I'm just</p> <p>20 going dates at this point.</p> <p>21 Q. When did it come up?</p> <p>22 A. It would have come up as part of</p> <p>23 the mediation process. Initial first time that</p> <p>24 there was a reference to it would have been the</p> <p>25 middle of January, 14th or 15th, something along</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 those lines.</p> <p>3 Q. So the subject of the commutation</p> <p>4 that is embodied eventually in the settlement</p> <p>5 agreement came up in some discussions as early as</p> <p>6 January of 2013. Is that your testimony?</p> <p>7 MR. SIDMAN: Object to the form.</p> <p>8 You can answer, if you can.</p> <p>9 A. This is not -- the Settlement</p> <p>10 Agreement is not a commutation. I just want to</p> <p>11 make sure that I don't misstate what you're</p> <p>12 referring to.</p> <p>13 Q. Okay.</p> <p>14 A. It's a -- it's a settlement</p> <p>15 agreement as opposed to a -- what I view as a</p> <p>16 commutation.</p> <p>17 Q. Does the -- in -- in your view,</p> <p>18 does the Settlement Agreement embrace the notion</p> <p>19 of a commutation?</p> <p>20 A. No.</p> <p>21 Q. Okay. You -- you said however that</p> <p>22 the -- the notion of a commutation did come up in</p> <p>23 discussions as early as January of 2013. Is that</p> <p>24 correct?</p> <p>25 A. That is correct.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. With whom did those discussions</p> <p>3 come up?</p> <p>4 A. As I mentioned earlier, it would</p> <p>5 have been Kathy Patrick, folks from MBIA or their</p> <p>6 representatives.</p> <p>7 Q. Anyone else?</p> <p>8 A. In that early time frame, I don't</p> <p>9 recall anyone else.</p> <p>10 Q. Okay. And where -- where were</p> <p>11 these communications occurring? Were they on the</p> <p>12 phone? Were they in writing? And that is</p> <p>13 particularly about commutation.</p> <p>14 A. They would have probably been on</p> <p>15 the phone or in person.</p> <p>16 Q. In person -- where did the</p> <p>17 in-person meetings take place?</p> <p>18 A. We had numerous in-person meetings</p> <p>19 at the offices of Kramer Levin who was counsel for</p> <p>20 the official unsecured creditors committee, all as</p> <p>21 part of the mediation process.</p> <p>22 Q. Okay. Is that where pretty much</p> <p>23 all of the meetings that took place face to face</p> <p>24 occurred during that process?</p> <p>25 MR. SIDMAN: Object to the form.</p>



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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. That you were involved in.</p> <p>3 A. There may have been one or two</p> <p>4 other meetings, not at their offices, at a lunch</p> <p>5 or other offices. But we had numerous, numerous</p> <p>6 meetings during that time frame as part of the</p> <p>7 mediation process.</p> <p>8 Q. And who was the representative from</p> <p>9 MBIA?</p> <p>10 A. Mitchell Sonkin, S-O-N-K-I-N.</p> <p>11 Q. And he is from MBIA as opposed to</p> <p>12 an outside counsel?</p> <p>13 A. He is a lawyer, as I understand,</p> <p>14 by -- by background. I don't know what his</p> <p>15 official status is, whether he's an employee of</p> <p>16 MBIA or a contractor for MBIA. He used to be an</p> <p>17 employee. I'm not sure what his official status</p> <p>18 is, though. But he's their representative, as I</p> <p>19 view it.</p> <p>20 Q. In the mediation, when for the</p> <p>21 first time did the subject of a flat payment to</p> <p>22 the RMBS holders come up?</p> <p>23 MR. SIDMAN: Objection to the form.</p> <p>24 You can answer.</p> <p>25 A. It would -- it would have been in</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 that January time frame.</p> <p>3 Q. So -- and that's before Bank of New</p> <p>4 York is involved. It's really, at least with</p> <p>5 respect to representatives of either investors or</p> <p>6 trustees, just Ms. Patrick. Is that correct?</p> <p>7 A. I -- I don't know when Bank of New</p> <p>8 York was involved in that, whether they were</p> <p>9 involved early on, earlier, you know, I -- I just</p> <p>10 don't know because, as I stated earlier, my</p> <p>11 contacts directly with Bank of New York were -- I</p> <p>12 believe they started in March. They might have</p> <p>13 started earlier in February as it relates to this,</p> <p>14 obviously, almost daily on, you know, the</p> <p>15 committee and the mediation.</p> <p>16 MR. SIDMAN: Hold on one second.</p> <p>17 Give me one second, Counsel.</p> <p>18 (Discussion off the record.)</p> <p>19 MR. BAIO: Let's go off for a</p> <p>20 minute.</p> <p>21 THE VIDEOGRAPHER: Going off the</p> <p>22 record at 5:45 p.m.</p> <p>23 (Recess taken.)</p> <p>24 THE VIDEOGRAPHER: We're back on</p> <p>25 the record. The time is 5:48 p.m.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. So in the mediation, the first time</p> <p>3 that the subject of a flat payment to the RMBS</p> <p>4 holders came up was sometime in January of 2013.</p> <p>5 Correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And by "came up," was it</p> <p>8 communicated to people other than those</p> <p>9 representing or representatives of FGIC? In other</p> <p>10 words, I'm not talking about internally. I'm</p> <p>11 talking about an external communication for the</p> <p>12 first time on that subject.</p> <p>13 MR. SIDMAN: Counsel, at this point</p> <p>14 I let you have a little bit of latitude in</p> <p>15 terms of when the first time the topic of</p> <p>16 commutation ever came up because -- especially</p> <p>17 with respect to your firm and the position</p> <p>18 your clients have taken, we represented to you</p> <p>19 -- we represented to you that the topic of</p> <p>20 commutations started and came up sometime for</p> <p>21 the first time around the middle of January.</p> <p>22 I think where you're going now is covered by</p> <p>23 the mediation privilege, and on that basis,</p> <p>24 I'm instructing my client not to answer this</p> <p>25 question.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. BAIO: All right.</p> <p>3 Q. Who brought up the concept of</p> <p>4 commutation in those discussions?</p> <p>5 MR. SIDMAN: Objection. I'm going</p> <p>6 to instruct the -- my client not to answer on</p> <p>7 the -- on the basis of the mediation</p> <p>8 privilege.</p> <p>9 Q. You mentioned that there were</p> <p>10 meetings from time to time that you participated</p> <p>11 in on the official committee. Is that correct?</p> <p>12 MR. EGGERMANN: I'm going to</p> <p>13 interject for one moment. Daniel Eggermann</p> <p>14 from Kramer Levin on behalf of the creditors</p> <p>15 committee. I want to caution the witness not</p> <p>16 to disclose any privileged communications with</p> <p>17 counsel.</p> <p>18 MR. BAIO: So you're trying to get</p> <p>19 me coming and going is what I'm hearing.</p> <p>20 Q. Anyway, you've heard the caution.</p> <p>21 My question is: You mentioned that</p> <p>22 there had been meetings from time to time that you</p> <p>23 participated in on the official committee. Is</p> <p>24 that correct? You had meetings from time to time?</p> <p>25 A. I serve as a member of the official</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 unsecured creditors committee, and we have</p> <p>3 meetings from time to time, yes.</p> <p>4 Q. And are there minutes of such</p> <p>5 meetings?</p> <p>6 A. I believe that there are minutes of</p> <p>7 certain of the meetings. I don't know if there</p> <p>8 are minutes of all the meetings.</p> <p>9 Q. And have you seen minutes of those</p> <p>10 meetings?</p> <p>11 A. I have seen minutes of certain of</p> <p>12 the meetings. I have not seen minutes of all of</p> <p>13 the meetings.</p> <p>14 Q. Have you seen minutes of meetings</p> <p>15 since January of 2013?</p> <p>16 A. I'll be honest with you, I don't</p> <p>17 recall what the last set of meeting minutes that</p> <p>18 I've seen are.</p> <p>19 Q. Not even the last set. Have you</p> <p>20 seen, in the entire period since January of 2013</p> <p>21 to the present, minutes or draft minutes of</p> <p>22 meetings of the official committee?</p> <p>23 MR. SIDMAN: Objection. Asked and</p> <p>24 answered.</p> <p>25 A. Actually, I -- I probably didn't</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 answer it correctly. I don't recall if I've seen</p> <p>3 any meeting minutes from the time period in which</p> <p>4 you're referring to. I just don't recall. I may</p> <p>5 have gotten them. I just don't recall right now.</p> <p>6 Q. Did you have communications with</p> <p>7 committee members either in anticipation of</p> <p>8 meetings, in connection of meetings or following</p> <p>9 meetings? And by "communications," I mean in</p> <p>10 writing.</p> <p>11 A. Okay. Restate -- go back and say</p> <p>12 that over again just so I know.</p> <p>13 Q. Okay. I'm now focusing just in</p> <p>14 your functioning as a committee member, did you,</p> <p>15 since January of 2013, have written communications</p> <p>16 with committee members about matters relating to</p> <p>17 the committee?</p> <p>18 MR. SIDMAN: Objection to the form.</p> <p>19 A. When you say "have communications,"</p> <p>20 are you referring to inbound or outbound?</p> <p>21 Q. Yes, both.</p> <p>22 MR. SIDMAN: Objection to the form.</p> <p>23 A. Yes.</p> <p>24 Q. And were they both inbound and</p> <p>25 outbound?</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. There would have been inbound and</p> <p>3 outbound communications, yes.</p> <p>4 Q. And did those communications</p> <p>5 involve anything to do with commutation?</p> <p>6 MR. EGGERMANN: I'm going to</p> <p>7 object. Again you're getting into the</p> <p>8 substance of communications that are</p> <p>9 privileged.</p> <p>10 MR. SIDMAN: I'm going to -- I'm</p> <p>11 going to object as well and instruct him he's</p> <p>12 not to answer.</p> <p>13 Q. I'm not asking about mediation at</p> <p>14 this point. I'm asking about communications in</p> <p>15 connection with the work that you do as a</p> <p>16 committee member. I just want that clear.</p> <p>17 MR. EGGERMANN: To the extent that</p> <p>18 work is at the direction of or in the presence</p> <p>19 of counsel, we assert a privilege, and we</p> <p>20 object to the question.</p> <p>21 MR. BAIO: I'm, of course,</p> <p>22 reserving my right with respect to all of</p> <p>23 these invocations, and the amount of time that</p> <p>24 I have, so I will also be asking for more</p> <p>25 time, but that's for another day.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. In connection with discussions and</p> <p>3 communications leading up to the settlement</p> <p>4 agreement, were there term sheets that you and</p> <p>5 FGIC exchanged with other parties? I'm not asking</p> <p>6 about the substance right now. I just want to</p> <p>7 know if there were term sheets.</p> <p>8 MR. SIDMAN: That's fine.</p> <p>9 You can answer the question.</p> <p>10 A. Everything having to do with the</p> <p>11 Settlement Agreement, what was originally may have</p> <p>12 been referred to as the commutation which</p> <p>13 ultimately became the Settlement Agreement, which</p> <p>14 is not a commutation, all of that would have been</p> <p>15 done in conjunction with the mediation process.</p> <p>16 Q. That's not what my question is,</p> <p>17 though. Right? It's whether there simply were</p> <p>18 exchanges of term sheets.</p> <p>19 A. You didn't give me a chance to</p> <p>20 finish my answer.</p> <p>21 Q. I'm sorry. I apologize.</p> <p>22 A. So I wanted to make sure you</p> <p>23 understood. So anything that would have been done</p> <p>24 in terms of exchanges of anything would have been</p> <p>25 in connection with the mediation process. There</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 were drafts of the Settlement Agreement that were</p> <p>3 communicated to -- from FGIC to other parties and</p> <p>4 it came back from other parties with comments.</p> <p>5 Q. When was the first such term sheet,</p> <p>6 if you can recall?</p> <p>7 MR. SIDMAN: I'm going to object</p> <p>8 and instruct the witness not to answer that</p> <p>9 question on the basis of mediation privilege.</p> <p>10 MR. BAIO: Again, I'm not asking</p> <p>11 for the substance. I believe that to test the</p> <p>12 claim that this is all part of the mediation</p> <p>13 and nothing else is subject to my being able</p> <p>14 to challenge and explore.</p> <p>15 Q. Did you see a document request that</p> <p>16 we served in this case?</p> <p>17 MR. SIDMAN: Objection to the form.</p> <p>18 A. I don't know what the technical</p> <p>19 term of it was, but I saw a request to FGIC of --</p> <p>20 it was a document request or, you know, notice of</p> <p>21 discovery. I don't know what the actual term was.</p> <p>22 I saw something to that effect, yes.</p> <p>23 Q. Okay. And did you search for</p> <p>24 documents in connection with that?</p> <p>25 MR. SIDMAN: I'm going to object --</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 I'm going to object.</p> <p>3 You can answer the question.</p> <p>4 A. I took direction from counsel as to</p> <p>5 what to do in connection with that.</p> <p>6 Q. Did you actually conduct any kind</p> <p>7 of search?</p> <p>8 MR. SIDMAN: I'm going to -- at</p> <p>9 this point he's already told you that he took</p> <p>10 direction from counsel. I'm going to instruct</p> <p>11 him not to answer.</p> <p>12 MR. SLACK: And the "you" here, are</p> <p>13 you talking about him personally or are you</p> <p>14 talking about FGIC?</p> <p>15 MR. BAIO: This is an unusual case</p> <p>16 that we have more than one person -- are you</p> <p>17 representing the same party?</p> <p>18 MR. SLACK: I represent the</p> <p>19 rehabilitator that -- that actually controls</p> <p>20 the privilege.</p> <p>21 MR. BAIO: So you represent a</p> <p>22 different party?</p> <p>23 MR. SLACK: I'm sorry. When you</p> <p>24 say "party," a different party --</p> <p>25 MR. BAIO: The witness or FGIC.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SLACK: I represent both FGIC</p> <p>3 and the FGIC's rehabilitator, and he's here in</p> <p>4 this deposition in order to protect the</p> <p>5 privileges which include searching for</p> <p>6 documents and those kinds of things. So yes,</p> <p>7 that's the reason I'm here in order to protect</p> <p>8 the privilege that the rehabilitator has the</p> <p>9 right to assert.</p> <p>10 Q. All right. My question, though, is</p> <p>11 whether you personally searched for documents.</p> <p>12 MR. SIDMAN: You can answer that</p> <p>13 question.</p> <p>14 A. No.</p> <p>15 Q. Does the word or the notion of</p> <p>16 something called sharpes, S-H-A-R-P-E-S, mean</p> <p>17 anything to you?</p> <p>18 A. Yes, it does.</p> <p>19 Q. What does it mean to you?</p> <p>20 A. If what you're referring to is the</p> <p>21 offer to exchange that FGIC had initiated through</p> <p>22 a third party back in the 2010 time frame, then</p> <p>23 that's the meaning that I assume that you're</p> <p>24 referring to.</p> <p>25 Q. That is, and the offer of exchange,</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 was it made to, among others, the clients that you</p> <p>3 now know I represent? Any of them.</p> <p>4 MR. SIDMAN: Objection. I'm going</p> <p>5 to -- I'm going to advise the witness not to</p> <p>6 answer the question if his understanding of</p> <p>7 how the offer was made or to whom it was made</p> <p>8 is based on communications with counsel. If</p> <p>9 it's not based on communications with counsel,</p> <p>10 then you are free to answer the question.</p> <p>11 A. FGIC retained an investment banking</p> <p>12 firm to go out and seek the exchange, you know, to</p> <p>13 perform the exchange offer. That investment</p> <p>14 banking firm was given a list of securitizations</p> <p>15 that FGIC was willing to exchange or do the</p> <p>16 exchange offer with, and that investment banking</p> <p>17 firm did its work. They contacted numerous</p> <p>18 people. I don't have a listing in front of me of</p> <p>19 all the parties that they contacted.</p> <p>20 Q. I see. Who was the investment bank</p> <p>21 or the investment advisor?</p> <p>22 A. I'm going to shorthand it because</p> <p>23 I'm not sure of the technical name, but it was</p> <p>24 Deutsche Bank. It may have been like another</p> <p>25 subsidiary or something of Deutsche Bank, but</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 commonly referred to as Deutsche Bank.</p> <p>3 Q. And did Deutsche Bank report to you</p> <p>4 in connection with any communications they</p> <p>5 received following the exchange offer? Is the</p> <p>6 answer yes?</p> <p>7 A. I think that's a whole different</p> <p>8 question than what you asked before so --</p> <p>9 Q. Okay. But what's the answer to my</p> <p>10 question that I just -- that's on the record?</p> <p>11 MR. SIDMAN: I'm going to object.</p> <p>12 What's your question?</p> <p>13 Q. Did Deutsche Bank report to you in</p> <p>14 connection with any communications they received</p> <p>15 following the communication of the exchange offer?</p> <p>16 MR. SIDMAN: The question is a</p> <p>17 yes-or-no question with respect to --</p> <p>18 A. Yes, it was just a little different</p> <p>19 than what you had said before so I just wanted to</p> <p>20 make sure.</p> <p>21 Q. It was, correct.</p> <p>22 A. Yes.</p> <p>23 Q. And this all occurred in 2010?</p> <p>24 A. Yes.</p> <p>25 Q. And is it fair and accurate to say</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 that there were multiple exchange offers that were</p> <p>3 made over the course of months?</p> <p>4 MR. SIDMAN: Object to the form.</p> <p>5 A. No.</p> <p>6 Q. It was only one?</p> <p>7 A. Well, when you say "multiple,"</p> <p>8 there was one offer to exchange that encompassed</p> <p>9 many different securitizations and other entities</p> <p>10 that we had policies with, and that exchange offer</p> <p>11 was extended multiple times.</p> <p>12 Q. Okay. Was it also altered during</p> <p>13 that extended period in any way?</p> <p>14 MR. SIDMAN: Object to the form.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And about how many times was</p> <p>17 it extended and altered, if you remember?</p> <p>18 A. I don't recall.</p> <p>19 Q. Were those discussions in part a --</p> <p>20 a request to commute policy obligations that FGIC</p> <p>21 had, in your understanding?</p> <p>22 MR. SIDMAN: Object to the form,</p> <p>23 and I would instruct the witness if he's</p> <p>24 basing his understanding on the advice of --</p> <p>25 on the communications with counsel, then I</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 would instruct the witness not to answer the</p> <p>3 question.</p> <p>4 A. Could you repeat the question? I'm</p> <p>5 sorry.</p> <p>6 Q. Did the -- did the offer of</p> <p>7 exchange contemplate a commutation of policy</p> <p>8 obligations, if you remember?</p> <p>9 A. No.</p> <p>10 MR. SIDMAN: Same objection.</p> <p>11 A. No.</p> <p>12 Q. It was just a settlement for a</p> <p>13 dollar amount that would then lead to the</p> <p>14 retirement of the bonds -- I mean, of the</p> <p>15 policies?</p> <p>16 MR. SIDMAN: Object to the form.</p> <p>17 A. No.</p> <p>18 Q. What was it? Was the offer?</p> <p>19 A. I think as I testified earlier, it</p> <p>20 was a situation where an offer was made to -- to</p> <p>21 the holders of the bonds, notes, whatever the term</p> <p>22 for that particular security was in which FGIC</p> <p>23 would pay a set amount, and then FGIC would, in</p> <p>24 essence, through that set up a separate trust, and</p> <p>25 it would receive back any of the insurance</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 payments that would have been made to the</p> <p>3 policyholder that would have flowed down and</p> <p>4 through to the -- to the underlying bonds, and</p> <p>5 FGIC would have received that piece back.</p> <p>6 Q. I see, for a flat payment of some</p> <p>7 amount?</p> <p>8 A. Yes.</p> <p>9 Q. And that exchange offer was</p> <p>10 rejected by investors. Is that correct?</p> <p>11 A. No.</p> <p>12 Q. Did any investors accept it?</p> <p>13 A. Yes.</p> <p>14 Q. Whom?</p> <p>15 A. I don't remember the final number,</p> <p>16 but approximately 50 percent of the investors</p> <p>17 accepted it.</p> <p>18 Q. And 50 percent approximately</p> <p>19 rejected it?</p> <p>20 A. No.</p> <p>21 Q. What did the other 50 percent do?</p> <p>22 A. They did not accept it.</p> <p>23 Q. I see. And then did it go forward</p> <p>24 with the 50 percent that agreed to go forward with</p> <p>25 it?</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Object to the form.</p> <p>3 A. No.</p> <p>4 Q. It did not go forward with them.</p> <p>5 Is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. So it went forward with none of the</p> <p>8 investors?</p> <p>9 MR. SIDMAN: Object to the form.</p> <p>10 A. We did not complete the offer to</p> <p>11 exchange.</p> <p>12 Q. All right. And why was that?</p> <p>13 A. It would not have provided us the</p> <p>14 resolution of what we needed to restore our -- our</p> <p>15 statutory capital surplus.</p> <p>16 Q. I see. So it was abandoned? How</p> <p>17 would you describe how it ended?</p> <p>18 MR. SIDMAN: Object to the form.</p> <p>19 Q. Use your word. Don't use mine. Or</p> <p>20 words.</p> <p>21 A. I'm not sure of the technical term</p> <p>22 because I'm sure Deutsche Bank has some type of a</p> <p>23 technical term for it, but I'll call it -- it</p> <p>24 was -- the offer was terminated.</p> <p>25 Q. Now, in connection with either the</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 events that led up to the settlement agreement --</p> <p>3 let me -- let me change that.</p> <p>4 Have you had discussions in the</p> <p>5 last year or so with representatives of my client?</p> <p>6 And let's start with representatives of CQS.</p> <p>7 A. Yes.</p> <p>8 Q. With whom?</p> <p>9 A. David Williams, and I don't recall</p> <p>10 if there was anyone else from CQS. There might</p> <p>11 have been. I don't recall.</p> <p>12 Q. And when did those conversations</p> <p>13 take place?</p> <p>14 A. Sometime -- well, I believe the</p> <p>15 first time that I had conversations with him, I'm</p> <p>16 not going to get the exact date, but it would have</p> <p>17 been after the filing of -- or after the</p> <p>18 appointment of the rehabilitator.</p> <p>19 Q. That would be in what year?</p> <p>20 A. That would have been June of 2012.</p> <p>21 Q. Okay. And did you ask to meet with</p> <p>22 him, or did he ask to meet with you?</p> <p>23 A. He sought a meeting with us.</p> <p>24 Q. And did you meet with him?</p> <p>25 A. Yes.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. And how many times did you meet</p> <p>3 with him thereafter? There was an initial</p> <p>4 meeting, I assume, and then some follow-ups?</p> <p>5 A. Yes, there was an initial meeting,</p> <p>6 and then there were multiple follow-ups. I don't</p> <p>7 recall exactly how many times.</p> <p>8 Q. When was the most recent meeting</p> <p>9 that you had with Mr. Williams?</p> <p>10 A. In-person meeting?</p> <p>11 Q. Let's take in-person, but you know</p> <p>12 what I'm going to do next.</p> <p>13 A. I just want to make sure I answer</p> <p>14 your question properly.</p> <p>15 Q. Go ahead. In person.</p> <p>16 A. It would have been the initial</p> <p>17 meeting.</p> <p>18 Q. Okay. Sometime June or shortly</p> <p>19 after of 2010?</p> <p>20 A. I'm sorry. The in-person</p> <p>21 meeting -- let me strike that. It would have been</p> <p>22 an initial meeting in person, and then there was</p> <p>23 one other meeting -- I know there was another</p> <p>24 meeting at my office. I just don't remember right</p> <p>25 now when it was.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Was it in 2013?</p> <p>3 A. I don't recall.</p> <p>4 Q. Was it within the last few months?</p> <p>5 A. Not an in-person meeting -- well, I</p> <p>6 -- I don't recall an in-person meeting.</p> <p>7 Q. When's the last time you recall</p> <p>8 speaking to him?</p> <p>9 A. On or about June 10th.</p> <p>10 Q. Of this year?</p> <p>11 A. Yes.</p> <p>12 Q. And that would be on the phone?</p> <p>13 A. Yes.</p> <p>14 Q. And prior to that, during the</p> <p>15 course of this calendar year, about how many times</p> <p>16 did you have a discussion or a conversation with</p> <p>17 him, whether it was on the phone or live?</p> <p>18 A. Probably a half dozen times or so.</p> <p>19 Q. And during any of those</p> <p>20 conversations, did you discuss settlement of the</p> <p>21 ResCap litigation with him?</p> <p>22 A. Mr. Williams had asked me in an</p> <p>23 earlier conversation not to discuss with him</p> <p>24 anything that was not public information.</p> <p>25 Q. But that's not my question.</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Did you discuss or raise the</p> <p>3 subject with him of a potential settlement of the</p> <p>4 ResCap litigation?</p> <p>5 MR. SIDMAN: Object to the form.</p> <p>6 A. I was trying to be cognizant of his</p> <p>7 request, so I did not discuss anything that was</p> <p>8 not public information with him.</p> <p>9 Q. So what were you discussing with</p> <p>10 him over those last communications in 2013?</p> <p>11 A. We were -- I was listening to his</p> <p>12 input and having discussions with him about the</p> <p>13 objections that he had to the FGIC rehabilitation</p> <p>14 plan.</p> <p>15 Q. And what did he say in that regard,</p> <p>16 and what did you say in that regard?</p> <p>17 A. Let me just correct -- when I</p> <p>18 say that he had, I really refer to the objections</p> <p>19 of CQS.</p> <p>20 Q. Fair enough, but he's the</p> <p>21 representative of CQS, and that's what these</p> <p>22 conversations assumed. Right? You were the</p> <p>23 representative for FGIC. He was the</p> <p>24 representative for CQS?</p> <p>25 A. Yes.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Okay. And what did you say, and</p> <p>3 what did he say in that regard?</p> <p>4 A. They had -- CQS had a variety of</p> <p>5 different objections to the rehabilitation plan</p> <p>6 that -- and put forth by the rehabilitator. And</p> <p>7 so I was discussing his thoughts on that and</p> <p>8 wanted to get his input to see if there were</p> <p>9 things that we could do to the plan based upon his</p> <p>10 input that the rehabilitator would accept and</p> <p>11 to -- to make the plan as fair and equitable as</p> <p>12 possible.</p> <p>13 Q. And what were his objections, if</p> <p>14 you can recall? Or by that I mean CQS.</p> <p>15 MR. SIDMAN: Objection to the form.</p> <p>16 A. They were related, as I recall, to</p> <p>17 the treatment of certain reimbursements that would</p> <p>18 flow through RMBS securitizations. And the other</p> <p>19 objection that they had was -- I believe it was --</p> <p>20 yeah, it was related to the novation agreement</p> <p>21 that FGIC had that was going to -- that would be</p> <p>22 executed upon the effective date of the Plan of</p> <p>23 Rehabilitation.</p> <p>24 Q. And what did you understand the</p> <p>25 nature of CQS's objection with respect to the</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 novation?</p> <p>3 A. They did not think that it was --</p> <p>4 my understanding is they did not think it was</p> <p>5 something that FGIC should enter into.</p> <p>6 Q. Now, as a result of your</p> <p>7 conversations with Mr. Williams did you, in fact,</p> <p>8 secure any changes to address his objections?</p> <p>9 MR. SLACK: I would say this: I</p> <p>10 think you can answer yes or no to that, but I</p> <p>11 don't think you should go into any of the</p> <p>12 discussions that you had with anyone.</p> <p>13 A. I'm sorry. Could you repeat the</p> <p>14 question?</p> <p>15 Q. Yes. As a result of or following</p> <p>16 your conversations with Mr. Williams, did you, in</p> <p>17 fact, secure any changes to address his</p> <p>18 objections?</p> <p>19 A. I made suggestions to the</p> <p>20 rehabilitator to encompass certain of the items</p> <p>21 that had been discussed with Mr. Williams.</p> <p>22 Q. And did you communicate back to</p> <p>23 Mr. Williams the result of those communications</p> <p>24 that you had with the rehabilitator?</p> <p>25 A. I would not have discussed anything</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 about the discussions that I would have with the</p> <p>3 rehabilitator. I did communicate that FGIC would</p> <p>4 seek certain changes, and the resulting document</p> <p>5 speaks for itself.</p> <p>6 Q. And what changes did you tell him</p> <p>7 that FGIC would seek?</p> <p>8 A. He had questions about the</p> <p>9 recoveries on the reimbursements, and he had</p> <p>10 questions related to how certain trusts might be</p> <p>11 treated, and I communicated back to him that we</p> <p>12 would make all of that information available in a</p> <p>13 public forum as part of the updated plan that</p> <p>14 ultimately was filed. And I communicated back to</p> <p>15 him. I believe that I did not have the</p> <p>16 information about the trust that he was concerned</p> <p>17 about, counsel did. But I communicated back to</p> <p>18 him that the trusts that he had concerns about</p> <p>19 would not be affected.</p> <p>20 Q. Would not be affected?</p> <p>21 A. Would not be affected.</p> <p>22 Q. And did he say anything in response</p> <p>23 like thank you or good to hear or anything?</p> <p>24 A. Yes, he did.</p> <p>25 Q. What did he say?</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. He invited me out for drinks</p> <p>3 afterwards.</p> <p>4 Q. Did you have drinks with him?</p> <p>5 A. No.</p> <p>6 Q. You thought that your last</p> <p>7 conversation with him was June 10th, I think. Is</p> <p>8 that correct?</p> <p>9 A. On or about -- on or about that.</p> <p>10 Q. Is there a reason why you remember</p> <p>11 that date?</p> <p>12 A. I do remember that it was June 4th.</p> <p>13 When you say conversations, I'm also referring</p> <p>14 to -- he might have sent me an e-mail on or about</p> <p>15 that -- not a conversation but an e-mail</p> <p>16 communication.</p> <p>17 Q. Okay. And do you remember having a</p> <p>18 conversation with him after June 4th?</p> <p>19 A. I don't remember the exact date. I</p> <p>20 do recall -- I don't remember whether it was a</p> <p>21 phone call or an e-mail in which he asked to talk</p> <p>22 to me about the issues surrounding the settlement</p> <p>23 agreement, and as I recall I told him that I would</p> <p>24 have to see if there was anything that I could say</p> <p>25 that was -- if I could talk to him in a manner</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 that was public because I was cognizant of his not</p> <p>3 wanting to obtain material non-public information.</p> <p>4 Q. And what did he say in response to</p> <p>5 your saying that?</p> <p>6 A. I don't remember. It was something</p> <p>7 to that effect of fine. If you can, great. If</p> <p>8 not -- you know, something to that effect.</p> <p>9 Q. And did you get back to him?</p> <p>10 MR. SIDMAN: Object to the form.</p> <p>11 A. I -- I don't recall.</p> <p>12 Q. This would be in June. So last</p> <p>13 month we're talking about. You don't recall if</p> <p>14 you got back to him after that?</p> <p>15 MR. SIDMAN: Objection. Asked and</p> <p>16 answered.</p> <p>17 A. I did not have any phone</p> <p>18 conversations with him. I don't recall if there</p> <p>19 was an e-mail conversation.</p> <p>20 Q. Okay. And there might be e-mails</p> <p>21 that were exchanged or there are e-mails that you</p> <p>22 exchanged with him back and forth. Is that</p> <p>23 correct?</p> <p>24 MR. SIDMAN: Object to the form.</p> <p>25 Q. And I'll limit myself to 2013.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Do you view him as a friend?</p> <p>4 MR. SIDMAN: Objection.</p> <p>5 A. I view him as a business associate.</p> <p>6 Q. In these conversations and</p> <p>7 communications that you had with him in 2013, you</p> <p>8 did not tell him anything about the settlement</p> <p>9 agreement or the negotiations relating to the</p> <p>10 settlement agreement. Is that correct?</p> <p>11 MR. SIDMAN: Objection. Asked and</p> <p>12 answered.</p> <p>13 A. All of the information about the</p> <p>14 mediation process which the settlement agreement</p> <p>15 was part of, were all subject to a variety of</p> <p>16 confidentiality agreements, and I had no knowledge</p> <p>17 that he had, you know, signed the confidentiality</p> <p>18 agreements. So I would not have disclosed</p> <p>19 anything because I would not have wanted to</p> <p>20 violate the confidentiality agreements.</p> <p>21 Q. Okay. So you didn't have any such</p> <p>22 communications with him in writing, orally, over</p> <p>23 drinks, anywhere, about the Settlement Agreement</p> <p>24 that was being negotiated or discussions about</p> <p>25 commutation. Is that fair and accurate?</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. SIDMAN: Object to the form.</p> <p>3 A. During what time frame are you</p> <p>4 referring to?</p> <p>5 Q. Up to June 4th of 2010 -- 2013.</p> <p>6 A. On or about June 1st, he made a</p> <p>7 reference to the Settlement Agreement that at that</p> <p>8 point was a publicly filed document in a</p> <p>9 conversation that we had that was not related to</p> <p>10 it. He made some references to it, but, again,</p> <p>11 because he was not wanting to get non-public</p> <p>12 information, I could not talk about it.</p> <p>13 Q. Prior to June 1st of 2013, you</p> <p>14 didn't have any -- strike that.</p> <p>15 Prior to the public disclosure of</p> <p>16 the Settlement Agreement, you did not have any</p> <p>17 discussion with him where you identified the</p> <p>18 Settlement Agreement, the negotiations or the</p> <p>19 potential that there would be a commutation of</p> <p>20 policies. Is that fair and accurate?</p> <p>21 MR. SIDMAN: Objection to form.</p> <p>22 You can answer.</p> <p>23 A. As I said earlier, I would have</p> <p>24 been -- you know, I wouldn't have done that</p> <p>25 because I would not have wanted to violate any of</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 the confidentiality agreements that were in place.</p> <p>3 Q. Understood. I just want to be sure</p> <p>4 you didn't. I understand you didn't want to, but</p> <p>5 testimony is funny.</p> <p>6 You didn't have such conversations.</p> <p>7 Correct?</p> <p>8 MR. SIDMAN: Object to the form.</p> <p>9 A. I did not.</p> <p>10 MR. BAIO: Okay. Thank you. Let's</p> <p>11 take a short break. We're running in to time</p> <p>12 issues. I do have more than would be needed,</p> <p>13 but we'll talk right after the break.</p> <p>14 THE VIDEOGRAPHER: Going off the</p> <p>15 record. The time is 6:18 p.m.</p> <p>16 (Recess taken.)</p> <p>17 THE VIDEOGRAPHER: Back on the</p> <p>18 record. The time is 6:29 p.m.</p> <p>19 Q. Mr. Dubel, do you recall executing</p> <p>20 a -- an affidavit in December of 2012 and</p> <p>21 submitting it to the supreme Court of New York in</p> <p>22 connection with the rehabilitation matters?</p> <p>23 A. I recall executing an affidavit. I</p> <p>24 had nothing to do with the submission of it. It</p> <p>25 was done through counsel.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. Okay. But you read the declaration</p> <p>3 and you signed it because you thought it was</p> <p>4 accurate. Correct?</p> <p>5 MR. SIDMAN: Object to the form.</p> <p>6 A. I believe it was an affidavit. I'm</p> <p>7 not sure if a declaration is the same thing.</p> <p>8 Q. Okay. No, it was an affidavit. I</p> <p>9 just -- because time's ticking, I don't have a lot</p> <p>10 of questions about it, but I can show you if you</p> <p>11 want to see it, as long as you promise not to take</p> <p>12 more than one minute.</p> <p>13 A. If you have questions about it,</p> <p>14 obviously, you know --</p> <p>15 Q. Okay. You made references to the</p> <p>16 base case and other work that was done by a number</p> <p>17 of outside experts, including Lazard. Do you</p> <p>18 recall that?</p> <p>19 A. In the affidavit?</p> <p>20 Q. Yes.</p> <p>21 A. I hate to do this, but if you show</p> <p>22 it to me, I'll look at it quickly.</p> <p>23 Q. Okay. We're going to have it --</p> <p>24 MR. BAIO: Yeah, let's mark it as</p> <p>25 Exhibit 5.</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 (Dubel Exhibit 5 marked for</p> <p>3 identification.)</p> <p>4 Q. My only question is: Is this the</p> <p>5 declaration, first at least, that you submitted to</p> <p>6 the court in December of 2012?</p> <p>7 MR. SIDMAN: Counselor, he</p> <p>8 testified earlier he didn't submit anything.</p> <p>9 He signed it.</p> <p>10 MR. BAIO: I'm sorry. I apologize.</p> <p>11 Q. Is this the one that you executed o</p> <p>12 or about the date it bears, December 12th, 2012?</p> <p>13 A. Again, it was an affidavit, not a</p> <p>14 declaration.</p> <p>15 Q. Yes, affidavit. I'm sorry.</p> <p>16 A. And I would have executed it on the</p> <p>17 12th of December, 2012.</p> <p>18 Q. Okay. And -- and -- and did you</p> <p>19 read it before you executed it?</p> <p>20 A. Yes.</p> <p>21 Q. Did you believe it was accurate?</p> <p>22 A. I do.</p> <p>23 Q. And there are references if you</p> <p>24 look at page -- if you look at page 9, one of the</p> <p>25 sentences there, which appears about eight lines</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 above paragraph 18, it says, "Even though FGIC</p> <p>3 initially only expects to pay 17.25 percent of</p> <p>4 permitted policy claims, with greater payments</p> <p>5 likely over time, since FGIC is actually paying</p> <p>6 such claims, it is always in FGIC's interest to</p> <p>7 maximize the value of the collateral and,</p> <p>8 therefore, minimize losses to policyholders and</p> <p>9 FGIC's overall obligations to FGIC's</p> <p>10 policyholders."</p> <p>11 Do you see that language?</p> <p>12 A. I do.</p> <p>13 Q. And did you believe that was</p> <p>14 accurate at the time that you executed this?</p> <p>15 A. I would want to refresh my</p> <p>16 recollection and read the whole paragraph because</p> <p>17 you're taking a piece of the paragraph out, so if</p> <p>18 you just give me one quick second.</p> <p>19 Q. Sure. Accurate?</p> <p>20 A. I understand. I -- when you say --</p> <p>21 mean accurate, I mean, it's -- I believe what it</p> <p>22 says.</p> <p>23 Q. Okay. Now, you recall also that</p> <p>24 there was the affidavit which is Exhibit 3 that</p> <p>25 was put in by the Lazard representative. Correct?</p>



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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I do recall it, yes.</p> <p>3 Q. And you had seen that before and</p> <p>4 after it was filed. Correct?</p> <p>5 MR. SIDMAN: Objection. That's not</p> <p>6 what he said, actually.</p> <p>7 A. No, I have not.</p> <p>8 Q. Okay. You had never seen it? Even</p> <p>9 as you sat here today, you had not seen it?</p> <p>10 A. That's not what I testified to</p> <p>11 earlier.</p> <p>12 Q. Okay. Have you seen it before?</p> <p>13 A. Before when?</p> <p>14 Q. Before today.</p> <p>15 A. I have.</p> <p>16 Q. When was the first time you saw it?</p> <p>17 A. I believe, as I testified earlier,</p> <p>18 it was on or shortly after it was -- it was filed.</p> <p>19 Q. Now, since the time that was filed,</p> <p>20 has Lazard done any more analyses for FGIC?</p> <p>21 MR. SIDMAN: Yes-or-no question.</p> <p>22 You can answer the question whether you know,</p> <p>23 yes or no. But I'm instructing the witness</p> <p>24 not to reveal any -- any substance with</p> <p>25 respect to that, to any analysis which may or</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 may not have occurred.</p> <p>3 A. I'm sorry. Could you repeat the</p> <p>4 question?</p> <p>5 Q. Has Lazard done any work for FGIC</p> <p>6 since December of 2012 concerning any analysis of</p> <p>7 claims, exposures and the like?</p> <p>8 A. No.</p> <p>9 MR. SIDMAN: Object to the form.</p> <p>10 Q. Okay. Has it done a base case</p> <p>11 analysis or updated any of its data?</p> <p>12 A. I -- I do not know.</p> <p>13 Q. Does Lazard -- have you met with</p> <p>14 Lazard since December of 2012?</p> <p>15 A. Yes.</p> <p>16 Q. When is the most recent time that</p> <p>17 you met with them?</p> <p>18 A. I really don't recall.</p> <p>19 Q. Within the last month?</p> <p>20 A. No.</p> <p>21 Q. Have you seen any reports that they</p> <p>22 generated in 2013?</p> <p>23 MR. SIDMAN: Object to the form.</p> <p>24 A. No.</p> <p>25 Q. Have you seen any summaries of</p>
Page 188	Page 189
<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 reports that they have generated?</p> <p>3 MR. SIDMAN: Object to the form.</p> <p>4 A. No.</p> <p>5 Q. Have they done any work for FGIC in</p> <p>6 2013?</p> <p>7 MR. SIDMAN: Object to the form.</p> <p>8 They don't do work for FGIC, but --</p> <p>9 A. No.</p> <p>10 Q. Do they do work for a</p> <p>11 representative of FGIC?</p> <p>12 A. They have been retained by counsel</p> <p>13 Weil Gotshal.</p> <p>14 Q. All right. And have they done work</p> <p>15 for Weil Gotshal on behalf of FGIC or in</p> <p>16 connection with Weil Gotshal's representation of</p> <p>17 FGIC in 2013?</p> <p>18 MR. SLACK: Object to the form.</p> <p>19 And you can answer that yes or no.</p> <p>20 A. Would you repeat the question?</p> <p>21 Q. Yes.</p> <p>22 Has Lazard done any work for Weil</p> <p>23 in connection with these matters in 2013?</p> <p>24 MR. SIDMAN: Once again, yes or no.</p> <p>25 A. I don't know.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. You don't know whether they've done</p> <p>3 any analysis for Weil in connection with these</p> <p>4 matters?</p> <p>5 MR. SIDMAN: Objection. Asked and</p> <p>6 answered.</p> <p>7 MR. SLACK: And I object to the</p> <p>8 form of the question.</p> <p>9 Q. Okay. Go ahead. You can answer</p> <p>10 it?</p> <p>11 A. I don't know.</p> <p>12 Q. Who would know?</p> <p>13 A. Weil.</p> <p>14 Q. Okay. Did you reach any conclusion</p> <p>15 as to whether the proposed settlement is in the</p> <p>16 best interest of policyholders? You personally.</p> <p>17 A. Yes.</p> <p>18 Q. And what conclusion did you reach?</p> <p>19 A. I reached the conclusion that the</p> <p>20 Settlement Agreement or settlement is in the best</p> <p>21 interest of all of FGIC's policyholders.</p> <p>22 Q. All of them collectively?</p> <p>23 A. FGIC's policyholders, yes.</p> <p>24 Q. Not any subgroup. Did you do any</p> <p>25 analysis, yourself, as to whether any subgroup of</p>

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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 policyholders was relatively disadvantaged as a</p> <p>3 result of the settlement?</p> <p>4 MR. SIDMAN: Object to the form.</p> <p>5 A. I don't know what you mean by</p> <p>6 "relatively disadvantaged."</p> <p>7 Q. That they get less than other</p> <p>8 policyholders get. Did you do any analysis on</p> <p>9 that?</p> <p>10 MR. SIDMAN: Object to the form.</p> <p>11 A. The settlement agreement</p> <p>12 contemplates an upfront payment that would de-risk</p> <p>13 all future issues for those claims so that there</p> <p>14 would be an immediate upfront payment that would</p> <p>15 settle all the future -- pending and future</p> <p>16 claims.</p> <p>17 So we looked at that to determine</p> <p>18 if that would make sense for FGIC. We did not</p> <p>19 look at it specifically for individual trusts</p> <p>20 because we were discussing and negotiating with</p> <p>21 the policyholders on who were our policyholders in</p> <p>22 those trusts.</p> <p>23 Q. And when you say "policyholders,"</p> <p>24 whom do you mean?</p> <p>25 A. The policyholders, the trustees.</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. BAIO: I have more questions.</p> <p>3 We're at the four o'clock time. I'll ask one</p> <p>4 thing.</p> <p>5 Q. If the Settlement Agreement is</p> <p>6 approved, do you personally benefit through any</p> <p>7 compensation arrangement?</p> <p>8 A. No.</p> <p>9 MR. BAIO: So, you know, I'm ready</p> <p>10 to continue, if you'll let me.</p> <p>11 MR. SIDMAN: We have an order from</p> <p>12 the judge saying to cut the depositions off at</p> <p>13 four hours.</p> <p>14 MR. BAIO: All right. We all are</p> <p>15 reserving our rights.</p> <p>16 THE VIDEOGRAPHER: This will end</p> <p>17 Videotape No. 4 of the deposition of John</p> <p>18 Dubel and conclude the recording of this</p> <p>19 deposition. We're going off the record at</p> <p>20 approximately 6:40 p.m., July 10, 2013.</p> <p>21 (Discussion off the record.)</p> <p>22 MR. SIDMAN: At the conclusion of</p> <p>23 the deposition, my client has indicated that</p> <p>24 he wants to clarify one of his answers that he</p> <p>25 just gave. So I'm going to allow him this</p>
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<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 opportunity to do that on the record.</p> <p>3 A. There was a question that you asked</p> <p>4 about the information -- and I don't remember the</p> <p>5 exact answer, but the information --</p> <p>6 Q. All right. We can read it. It may</p> <p>7 be a good way to do it.</p> <p>8 A. That Weil and Lazard were doing, so</p> <p>9 I just want to make sure.</p> <p>10 (Discussion off the record.)</p> <p>11 (The requested portion of the</p> <p>12 record was read.)</p> <p>13 A. I did not direct Weil -- I mean,</p> <p>14 Weil or -- I don't direct Weil or Lazard. They</p> <p>15 may have done work for Weil in connection with</p> <p>16 matters since then. We don't see them -- we,</p> <p>17 FGIC, don't always see them. So I don't know all</p> <p>18 of the different things that they have done. I</p> <p>19 believe that they looked at this Settlement</p> <p>20 Agreement to give advice to Weil, but I don't know</p> <p>21 what exactly they did. I just wanted to make sure</p> <p>22 I was accurate.</p> <p>23</p> <p>24 (Continued on the next page to</p> <p>25 allow for signature line and jurat.)</p>	<p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 MR. BAIO: Fair enough. Thank you.</p> <p>3 Accuracy is good.</p> <p>4 (Time Ended: 6:45 p.m.)</p> <p>5</p> <p>6</p> <p>7 _____</p> <p>8 JOHN S. DUBEL</p> <p>9</p> <p>10 Subscribed and sworn to</p> <p>11 before me this day</p> <p>12 of , 2013.</p> <p>13</p> <p>14 _____</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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## DIRECTION TO WITNESS NOT TO ANSWER

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## INFORMATION TO BE FURNISHED

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## QUESTIONS MARKED FOR A RULING

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CERTIFICATE  
STATE OF NEW YORK )  
)ss:  
COUNTY OF NEW YORK)  
I, JOMANNA DeROSA, a Certified  
Shorthand Reporter and Notary Public within  
and for the States of New York, New Jersey,  
California and Arizona, do hereby certify:  
That JOHN S. DUBEL, the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

In witness whereof, I have hereunto  
set my hand this 11th day of July, 2013.

\_\_\_\_\_  
JOMANNA DeROSA

## \*\*\*ERRATA SHEET\*\*\*

NAME OF CASE: In Re: Residential Capital

DATE OF DEPOSITION: 7/10/13

NAME OF WITNESS: John S. Dubel

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
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From \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_  
JOHN S. DUBEL

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.***  
**Case No. 12-12020 (MG)**

Deponent: John S. Dubel

Deposition Date: July 10, 2013

**WITNESS CORRECTIONS**

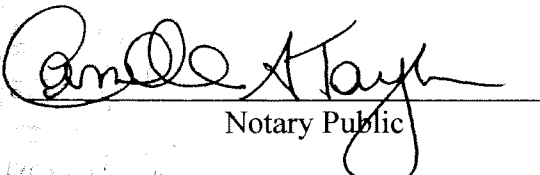
Page	Line	Correction	Reason
18	17	Insert "material" after "be"	Clarification
27	4	Delete "been"	Clarification
36	3	Replace "became" with "came"	Transcription error
41	18	Delete "in --"	Clarification
47	17	Replace "ensured" with "insured"	Transcription error
55	11	Replace "policy" with "group"	Clarification
56	20	Replace "policy" with "group"	Clarification
73	14	Delete "there have been payment --"	Clarification
81	14	Replace "Lynn Cohen" with "Ling-Cohan"	Transcription error
81	15	Replace "Lynn Cohen" with "Ling-Cohan"	Transcription error
83	14	Delete "I"	Transcription error
93	16	Delete "it"	Clarification
130	9	Insert "and" after "trusts"	Clarification

Dated: August 9, 2013

By: 

John S. Dubel  
Deponent

Sworn and Subscribed to before me this  
9th day of August 2013

  
Notary Public

Camille A. Taylor  
Notary Public, State of New York  
No. 43-01TA4994058  
Qualified in Richmond County  
Certificate Filed in New York County  
Commission Expires March 30, 2014